

**VENUE LICENSE, LEASE, AND MANAGEMENT AGREEMENT**

**By and Between**

**BALLCORPS, LLC**

**and**

**CITY OF MADISON, ALABAMA**

**February 13, 2018**

**VENUE LICENSE, LEASE,  
AND MANAGEMENT AGREEMENT**

This Venue License, Lease, and Management Agreement (“Agreement”) is made and entered into as of the 13<sup>th</sup> day of February, 2018, by and between **BALLCORPS, LLC**, an Arizona limited liability company authorized to be business in the State of Alabama (“BallCorps”), and the **CITY OF MADISON, ALABAMA**, a municipal corporation (the “City”) (BallCorps and the City are sometimes herein referred to collectively as the “Parties,” or singularly as each “Party”).

**ARTICLE I  
RECITALS**

**WHEREAS**, BallCorps owns and operates a Class AA Professional Minor League Baseball team (the “Club”) in the Southern League of Professional Baseball Clubs, Inc. (the “Southern League”); and

**WHEREAS**, BallCorps and the City desire that BallCorps cause the Club to play its home baseball games in a multi-use venue that among many different uses is suitable and has specific design characteristics suitable for Class AA Minor League Professional Baseball (the “Venue”, as further defined in this Agreement together with the “Venue Area” as defined in this Agreement) to be constructed by the City at a site located contiguous to Interstate 565 (“I-565”) in the development commonly known as Town Madison (the “Site”), more particularly described in Exhibit II(MM) attached hereto and incorporated herein by reference, for an amount currently estimated at but not to exceed Forty-Six Million Dollars (\$46,000,000) net of the cost of land and public infrastructure as further described in Exhibit II(HH) attached hereto and incorporated herein by reference (the “Project Budget”), which shall be paid by the City or other public funding sources including, but not limited to the Base License Fees (as defined herein), Performance License Fees (as defined herein), shared revenues and anticipated tax revenues; and

**WHEREAS**, the City plans to finance the construction of the Venue with the proceeds of its General Obligation Taxable Warrants, Series 2018; and

**WHEREAS**, the City is entering this Agreement for the public purposes of providing economic, recreational, cultural, and community development opportunities for residents of the City who will attend events at the Venue, to provide additional employment opportunities for City residents, to expand the economic and tax base of the City, as well as to increase regional exposure for and tourism into the City; and

**WHEREAS**, the Site is situated in and around a Key Development Area, which the City’s Growth Plan has identified as highly suited for important urban expansion, development, and renewal, and which is integral to the City’s ongoing efforts to facilitate redevelopment and improve and bring new commerce, public entertainment, and quality of life improvements along the Interstate 565 corridor; and

**WHEREAS**, the City has determined that development of the Venue and leasing it to BallCorps is in the public interest and serves a valid and sufficient public purpose by encouraging and promoting tourism and economic activity in and around the Site, which will result in positive economic benefits to the City and surrounding area, notwithstanding any benefits that BallCorps will derive; and

**WHEREAS**, the City, upon due investigation has found and determined that the consideration provided to the City pursuant to this Agreement is reasonable and fair;

**WHEREAS**, upon the satisfaction of certain conditions contained in Article III of this Agreement, the City intends to construct the Venue and lease and license certain use of the same to BallCorps under the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, BallCorps and the City agree as follows:

## **ARTICLE II** **DEFINITIONS**

As used in this Agreement, the following terms shall have the meaning set forth below.

A. “Announced Attendance” shall mean the attendance reported to MiLB for all BallCorps Home Baseball Games.

B. “Annual Maintenance Budget” shall have the meaning set forth in Article IV(E) hereof.

C. “Applicable Sales Tax Proceeds” shall mean and include all City Sales Tax Proceeds generated at the Venue, less and except proceeds dedicated to public school purposes. This amount is equal to a 3.0% portion of the City Sales Taxes that are levied, collected, and received by the City each fiscal year.

D. “BallCorps Areas” shall mean the areas necessary for the operating of the Club designated in the Plans and Specifications as administrative offices, team store(s), designated storage areas, certain parking, the Club locker room during the baseball season, and coaching offices during the baseball season and, subject to the terms of the Management Agreement, all kitchens, food and beverage preparation, storage and sales areas.

E. “BallCorps Events” shall mean BallCorps Home Baseball Games and BallCorps Non-Baseball Events scheduled at the Venue by BallCorps.

F. “BallCorps Home Baseball Games” shall mean all home Regular Season and all playoff and exhibition games of the Club (including games with its Major League Baseball affiliate).

G. "BallCorps Maintenance Obligations" shall have the meaning set forth in Article IV(D)(1).

H. "BallCorps Non-Baseball Events" shall mean any event that is not a BallCorps Home Baseball Game or a City Event and is an event including but not limited to concerts, exhibition games (excluding BallCorps exhibition games), or other sporting events conducted at the Venue.

I. "BallCorps Parking Areas" shall mean those areas marked as "BallCorps Parking Areas" on Exhibit V(C) attached.

J. "Baseball Authorities" shall mean, collectively, the National Association of Professional Baseball Leagues, Inc. (MiLB), Office of the Commissioner of Major League Baseball (MLB), the Southern League, and their successors or assigns.

K. "Base License Fee" shall have the meaning set forth in Article IV(A)(3)(a).

L. "Board of Advisors" shall have the meaning set forth in Article XXIII hereof.

M. "Broadcast Rights" shall mean the exclusive worldwide right, on a live or delayed basis, to record, publish, display, produce, distribute and reproduce programming by means of the transmission or retransmission of electronic signals, including over-the-air VHF and UHF signals, internet or otherwise "online", cable (basic, premium and pay-per-view), multi-channel distribution systems, wire, fiber, microwave, satellite, master antenna and direct broadcast satellite, as well as recorded visual images with or without sound, including photographs, films, videotapes and cartridges. Broadcast Rights shall also include the copyrights for any such programming or portions thereof and the exclusive right to make, use, sell and license the same for commercial or non-commercial purposes.

N. "Capital Maintenance" shall mean certain repairs, replacements, long term maintenance, or other capital expenditures identified in a Capital Maintenance Schedule developed as set forth in Article IV(E).

O. "Capital Maintenance Fund" shall have the meaning set forth in Article IV(E) herein.

P. "Capital Maintenance Schedule" shall have the meaning set forth in Article IV(E) herein.

Q. "City Event" shall mean any event, activity, or program held at the Venue associated with the City and is not a BallCorps Event.

R. "City Financing" shall mean the financing source and structure to be used by the City to fund construction of the Venue.

S. “City Maintenance Obligations” shall have the meaning set forth in Article IV(D)(2).

T. “City Sales Tax” shall mean collectively:

1. The privilege license and excise taxes levied by the City, which are authorized and levied as sales and use taxes pursuant to Chapter 10, Article III of the *Code of Ordinances, City of Madison, Alabama*, and which consist of:

(a) a three and one half percent (3.5%) privilege license tax on persons engaged in the business of selling at retail any tangible personal property within the City (subject to exemption of certain property as provided by law) or in the business of conducting places of amusement or entertainment within the City, generally measured by the gross sales or receipts of such businesses, and

(b) a three and one half percent (3.5%) excise tax on the storage, use, or other consumption of tangible personal property (subject to exemptions of certain property as provided by law) within the City, generally measured by the sales price of such property; and

2. Any privilege license and excise taxes that may be levied in lieu of, in substitution for, or in continuation of, said privilege license and excise taxes.

U. “Commencement Date” shall have the meaning set forth in Article III(A).

V. “Club” shall have the meaning set forth in the Recitals.

W. “Event Day Costs” shall mean the costs associated with the Venue Services for Venue Events.

X. “Food and Beverage Concessions” shall mean all food and beverage (both alcoholic and non-alcoholic) products and services required or appropriate for, and sold or provided at, any and all Venue Events, whether through fixed or portable stands, machines or vendors, including but not limited to, dining, Suite waitperson service, catering, concessions vending, vending machines, roving vendors, picnics, snack bars and any other food or beverages served at the Venue.

Y. “Food and Beverage Concessions Equipment” shall mean all equipment required to store, prepare, display, service, distribute and sell Food and Beverage Concessions at the Venue.

Z. “Management Agreement” shall mean that certain Management Agreement by and between BallCorps or an affiliate thereof and the City, of even date

herewith, providing for the management and operation of the Venue, a copy of which is attached hereto as Exhibit II(Y).

AA. "MiLB" shall have the meaning set forth in Section II(I) above.

BB. "Naming Rights" shall have the meaning set forth in Article VIII.

CC. "Naming Rights Sponsor" shall mean the entity after whom the Venue shall be named pursuant to the Naming Rights Agreement.

DD. "Novelties and Souvenirs" shall mean any product, item, device, souvenir, novelty, supply or other similar kind of personal property. Novelties and Souvenirs shall include, but are not limited to, baseball caps and hats, bats, T-shirts, sweatshirts, jerseys and pullovers, baseballs, baseball and other sports and entertainment trading cards, baseball gloves, scorecards, programs, souvenir books and other products related to the forgoing products or related to or sold at the Venue.

EE. "Parking Areas" shall mean those areas marked as "Parking Areas" on Exhibit V(C) attached. Such area(s) shall be a surface parking lot or lots, which are well-lighted, striped and with secure access.

FF. "Performance License Fees" shall have the meaning set forth in Article IV(A)(3)(b) herein.

GG. "Permanently Affixed Venue Signage" shall mean all advertising signage at the Venue that is permanently affixed to any interior portion of the Venue including, the outfield fence(s) and other field surface walls surrounding the field and around the concourse, picnic areas, suite level, foul poles, lighting structures, dugouts and the service level. It shall also include marquee signage at or near the entrances to the Venue. All Permanently Affixed Venue Signage, and all temporary signage displayed during BallCorps Events, on the interior of the Venue shall be determined by BallCorps. All Permanently Affixed Venue Signage on the exterior of the Venue must be approved by both the Board of Advisors and the City in their reasonable discretion. Without limiting the foregoing, it is the parties' intention that all signage will be approved unless it is demonstrated to violate the City's Zoning Ordinance and community standards of good taste and morality. BallCorps shall receive the exclusive right to use or replace the existing billboard signage adjacent to the Venue and I-565 (the "I-565 Signage") during the term hereof, provided BallCorps shall be responsible for the cost of repairing or replacing such I-565 Signage.

HH. "Plans and Specifications" shall mean the preliminary plans and specifications attached as Exhibit II(GG), which must be approved by the City's Planning Commission, and which, subject to the City's regulations, may be amended by mutual agreement of the Parties, specifically describing the design of the Venue, Venue Area, and all included amenities.

II. "Project Budget" shall have the meaning set forth in the Recitals.

JJ. "Project Contingencies" shall have the meaning set forth in Article III(C).

KK. "Regular Season" shall mean those professional baseball games that are played in any calendar year by and between baseball teams in the Southern League pursuant to scheduling by the Southern League excluding pre-season, spring-training, exhibition, all-star, post-season or playoff games.

LL. "Revenue Protection Period" shall mean the first four (4) years beginning with the Commencement Date.

MM. "Scoreboard Advertising" shall mean any and all advertising displayed on the Venue scoreboard, including audio, video and message center advertising.

NN. "Site" shall mean a site located contiguous to Interstate 565 in the development commonly known as Town Madison, more particularly described in Exhibit II(MM)

OO. "Suites" shall mean those areas designated as Suites in the Plans and Specifications.

PP. "Target Revenue" shall mean One Million Four Hundred Thousand Dollars (\$1,400,000).

QQ. "Team Store(s)" shall mean the merchandise store(s) located within the Venue, which is more specifically described in the Plans and Specifications.

RR. "Term" shall have the meaning set forth in Article III(A).

SS. "Town Madison Cooperative District" shall mean the Town Madison Cooperative District, a public corporation organized under the laws of the State of Alabama.

TT. "Utilities" shall mean the electricity, gas, water, sanitary and storm sewer, garbage and trash collection services, WiFi/cable, and telephone services utilized at the Venue and in the Venue Area.

UU. "Venue" shall mean the planned multi-use venue that among many different uses encompasses a stadium suitable for Class AA Minor League Professional Baseball located in the City of Madison, Alabama, within the Venue Area, all of which is more specifically described in the Plans and Specifications and Exhibit II(TT).

VV. "Venue Area" shall mean all areas as designated on the attached Exhibit II(UU).

WW. "Venue Equipment" shall have the meaning set forth in Article XV(B) hereof.

XX. "Venue Events" shall mean all BallCorps Home Baseball Games, City Events and all other BallCorps Events.

YY. "Venue Manager" shall have the meaning set forth in the Management Agreement.

ZZ. "Venue Revenue" shall mean the gross revenues payable to the City from the City's share of (a) parking fee revenue generated in the Parking Areas, (b) Base License Fees, (c) City Events, (d) Naming Rights, (e) Performance License Fees, (f) Applicable Sales Tax Proceeds, and (g) BallCorps Non-Baseball Events.

AAA. "Venue Services" shall mean and consist of the following:

1. Operation Services. The operation and staffing of the Venue scoreboard, the public address system, the box office, security within the Venue Area, all ticket booths and ushering services, first-aid room, the opening and closing of the Venue and the operation of all Venue facilities (excluding BallCorps Areas) at all Venue Events.

2. Field Preparation. Field preparation in advance of baseball games or other on-field Venue Events which shall include, but not be limited to, lining the field, preparation of the unsodded areas of the field, installation of bases, restoration of the field surface as required, and such other services needed to fully prepare the field for baseball games and other Venue Events.

3. Janitorial Services. The cleaning and maintenance of the interior portions of the Venue Area during and after all Venue Events, including the stocking of all restrooms with paper products as required prior to such events, the pickup and disposal of all trash collected immediately after such events and any necessary clean-up of trash and debris from the Venue Areas used by attendees of Venue Events. All janitorial services provided to the Venue Area shall include all action necessary to maintain the areas in a clean and attractive manner and in compliance with all legal requirements.

4. Pre-Event Venue Services. The preparation of the Venue for any Venue Event as may be required, including, but not limited to, conversion of the playing field for other athletic events, installation of any supplemental seating equipment, installation of stage or platform equipment, installation of any additional sound equipment and/or temporary lighting that may be required for the Venue Event.

### **ARTICLE III**

#### **TERM**

A. Term of Agreement. This Agreement is effective and enforceable immediately upon execution by the Parties. The term of BallCorps' license rights under this Agreement, plus any extension (collectively the "Term"), shall commence upon substantial



completion of Venue construction when City provides notice to BallCorps that it has issued Certificate of Occupancy for the Venue and (the "Commencement Date"), which the City shall use all reasonable efforts to provide by April 1, 2020, and shall expire, unless extended or sooner terminated as provided herein, thirty (30) years following such Commencement Date. BallCorps shall be given early access to the Team Areas to establish business and baseball-related operations necessary to prepare for play as completion of the Venue permits as City approves in its reasonable discretion with the advice and consent of the Venue's general contractor and construction manager.

B. Options by BallCorps. BallCorps may extend this Agreement on the terms set forth herein for up to two (2) successive additional terms of five (5) years each by giving notice in writing to the City before one (1) year prior to end of the then current Term.

C. Project Contingencies. The Parties' obligations under this Agreement are contingent upon the satisfaction of the project contingencies described below (the "Project Contingencies"). Should the Project Contingencies fail to occur within the timeframes provided in this Article III(C), provided each has complied with its obligations to use all reasonable efforts and work in good faith, then either Party may suspend without liability its obligations under this Agreement. The Project Contingencies are:

1. The City and BallCorps shall use all reasonable efforts and work in good faith to satisfy the following Project Contingencies as soon as possible.

(a) Approval of Baseball Authorities. In accordance with Section XXIV(GG), BallCorps must obtain the necessary approvals from the Baseball Authorities, including approval of this Agreement, approval of the design of the Venue, and approval for the relocation of the Club's home field from Mobile, Alabama, to the City by May 1, 2018.

(b) Venue & Infrastructure Funding Agreements. Subject to any and all state law prerequisite requirements for hearings and validations, the City will use all reasonable efforts and work in good faith to approve and enter into (i) an infrastructure funding agreement ("Funding Agreement") with the Town Madison Cooperative District, the Breland Companies or their affiliates, and related necessary parties, if any, by March 1, 2018; and (ii) a Venue funding agreement from the Breland Companies or their affiliates.

(c) Property Acquisition. By March 1, 2018, the City will use all reasonable efforts and work in good faith to acquire and accept fee simple title to, or a leasehold interest guaranteeing fee simple title, to both the Venue Area and the Parking Areas from Old Town Investments, LLC, at nominal cost, and will, via the above-referenced Funding Agreement or amendment thereto, remove the Site from the

Project Area, as defined in the Funding Agreement, and ensure that no revenue from the Site is pledged to the debt of the Town Madison Cooperative District.

2. Financing. The City must obtain warrant financing on terms reasonably acceptable to the City not exceeding the Project Budget, as well as a final, non-appealable court order validating the Project pursuant to Amendment No. 772 (Section 94.01) of the of the Constitution of Alabama, as amended, and Article 17 of Chapter 6 of Title 16 of the Code of Alabama (1975). The City will use all reasonable efforts and work in good faith to obtain financing and a validation order by May 1, 2018, but the parties acknowledge that this timing depends upon court scheduling and applicable appeal periods.

3. Termination Rights. Either Party may terminate this Agreement after five (5) days' prior written notice in the event any of the Project Contingencies are not satisfied by the dates provided above. Provided the Party that has not satisfied a Project Contingency has used all reasonable efforts and worked in good faith to satisfy the Project Contingency, in the event of termination under this Section III(C)(3), neither Party shall have any further obligations to the other Party hereunder.

#### **ARTICLE IV** **FINANCIAL TERMS**

A. Venue Revenue.

1. City's Revenue Protection. Throughout the Term of this Agreement on an annual basis, the City shall receive not less than One Million Dollars (\$1,000,000), in the aggregate, from the Venue Revenue. On or prior to March 15 of each year during the Term hereof, the Parties shall provide to each other detailed accounting of all payments and receipts which together constitute the Venue Revenue for the prior calendar year, as well as full access to all records and personnel which account for the same. In the event the Venue Revenue for such prior calendar year is less than One Million Dollars (\$1,000,000) in the aggregate, BallCorps shall pay to the City by April 15 (for the prior year) the shortfall. BallCorps' failure to deliver this sum, after written notice and the ability to cure such within thirty (30) days of failure to make timely payment, shall constitute an Event of Default under this Agreement, and the City may report the same to the Baseball Authorities. City's rights to receive these payments are owed to City for each year of this Agreement, cumulatively. In the event of a failure by BallCorps to make any such payments, the City's sole and exclusive remedy for such Event of Default shall be to terminate this Agreement in accordance with the terms hereof; provided, however, that any lease termination may not occur within one (1) year after the Event of Default has been declared and uncured.

2. Revenue Protection Period. During the Revenue Protection Period, in the event that the City's receipts from Venue Revenue is less than the Target Revenue in any calendar year during the Revenue Protection Period, the City shall be entitled to defer indefinitely any Maintenance Contribution required in Article IV of this Agreement to the extent of any shortfall.

3. License Fees.

(a) Base License Fees. In consideration for the License to use the Venue granted to it by the City pursuant to this Agreement, BallCorps shall pay an annual base license fee of Two Hundred Fifty Thousand Dollars (\$250,000) per year, commencing on the Commencement Date (the "Base License Fee"). The Base License Fee shall be adjusted every five (5) years, commencing in 2026, in accordance with an increase in the Consumer Price Index, using 2020 as a base year. The Base License Fee shall be prorated in the event the Commencement Date is after the scheduled opening game for BallCorps' Southern League season. The Base License Fee shall be payable in four (4) equal installments of Sixty-two Thousand Five Hundred Dollars (\$62,500.00) each on or before (i) opening day of the Regular Season; (ii) the Southern League All Star Game; (iii) the conclusion of the Regular Season; and (iv) October 31 of any calendar year during the Term.

(b) Performance License Fees. BallCorps shall also pay to the City on or before October 31 of each year for the prior season throughout the Term hereof additional performance license fees in accordance with the following schedule (the "Performance License Fees"):

BallCorps Home Baseball Game Announced Attendance	Additional License Fees Payable (per person in excess of 250,000)
0-250,000	\$0.00
250,000+	\$1.00

By way of example, should the BallCorps Home Baseball Game Announced Attendance for the calendar year ending October 31, 2020 be 300,000, BallCorps would pay the City the sum of Fifty Thousand Dollars (\$50,000). Should BallCorps Home Baseball Game Announced Attendance be 350,000, BallCorps would pay the City the sum of One Hundred Thousand Dollars (\$100,000).

Attendance at the Venue from events other than BallCorps Home Baseball Games (e.g., City Events, BallCorps Non-Baseball Events,

etc.) are not included in the attendance calculation for Performance License Fees.

4. City Events. The Parties shall in good faith allocate all Event Day Costs in an equitable manner. Net revenue from City Events shall be shared with BallCorps equally.

5. BallCorps Non-Baseball Events. The Parties will share equally revenue, net of expenses, produced from BallCorps Non-Baseball Events.

6. Naming Rights. As described further in Article VIII, the City and BallCorps shall share in all Naming Rights equally, net of costs, signage, inventory and other team inventory. Notwithstanding any suite(s) devoted to the Naming Rights Sponsor via the Naming Rights Agreement, the number of tickets allocated to said suite(s) as reported to MiLB shall count toward the calculation of Performance License Fees.

7. Parking Revenue. Any parking revenue, net of staffing and other parking-related expenses, shall be shared equally by the Parties. Staffing of the parking areas is the responsibility of BallCorps.

B. Revenue Retention.

1. With the exception of taxes required by law to be remitted to any taxing authorities, BallCorps shall be entitled to collect and retain all operating revenues received from the operations of the Venue during BallCorps Home Baseball Games, including (but not limited to) all Permanently Affixed Venue Signage, Scoreboard Advertising, ticket sales and licenses, suite and club rentals or sublicenses, souvenirs and other merchandise, concessions, programs, hospitality, catering and pouring or beverage advertising revenue, other vending or licensing revenues, exterior and I-565 signage, scoreboard advertising, Broadcast Rights and advertising, and all other operating revenues from all BallCorps Home Baseball Games. BallCorps shall also retain all revenues from Novelties and Souvenirs from all City Events.

2. Notwithstanding this Section, BallCorps shall remit Applicable Sales Tax Proceeds to the City in accordance with state and local law. City shall credit BallCorps the Applicable Sales Tax Proceeds that BallCorps has paid from operation of the Venue for purposes of the calculation of Venue Revenue.

C. City Events. BallCorps shall receive half of the net revenue received by the City for any City Event. Payment from the City shall be made within thirty (30) days of the City's receipt of the same.

D. Maintenance.

1. BallCorps Maintenance. BallCorps shall pay and be responsible for Venue Area maintenance including, but not limited to, day-to-day maintenance, but not turf replacement (provided, however, BallCorps will be responsible for incidental turf replacement to specific, limited areas, e.g., behind home plate), of the playing field and landscaped areas inside the Venue Area, which maintenance shall include regular mowing, watering, fertilizing, and other chemical treatments required to maintain the field and landscaping at professional stadium quality and the grounds in an attractive and clean condition, specialized turf care as required, such as aeration and other treatments which are required to maintain the quality of the field as defined herein, recycling requirements and the maintenance of all unsodded areas of the field and Venue Area (the "BallCorps Maintenance Obligations").

2. City Maintenance. As part of the City Maintenance Obligations, the City shall provide, at its expense, all capital maintenance required at the Venue, excluding BallCorps Maintenance Obligations, including repairs, replacements, long-term maintenance and other capital expenditures required to maintain the Venue as a first-class professional baseball facility, including those which are to be identified on the Capital Maintenance Schedule described in Section IV(E) below ("City Maintenance Obligations").

3. Reimbursement. In the event either Party pays any costs for which the other Party is responsible, reimbursement shall be made to the Party not responsible by the Party responsible within thirty (30) days after being invoiced for the same.

4. Quality. All maintenance to be provided by either party shall be done in a timely and workmanlike manner.

E. Capital Maintenance Fund. The City shall establish a maintenance fund (the "Capital Maintenance Fund") for the long term maintenance needs of the Venue to maintain the Venue in proper repair and condition. The primary purpose of the Capital Maintenance Fund shall be to assure that the Venue remains a first-class minor league facility and an asset to Madison and the surrounding community for at least the life of this Agreement. During the Revenue Protection Period, the City shall contribute to the Capital Maintenance Fund Venue Revenue in excess of One Million Four Hundred Thousand Dollars (\$1,400,000), up to Three Hundred Thousand Dollars (\$300,000). Subsequent to the Revenue Protection Period, the City shall deposit annually a sum not less than Three Hundred Thousand Dollars (\$300,000) (the "Maintenance Contribution") into the Capital Maintenance Fund. Under the recommendation of the Board of Advisors, such Capital Maintenance Fund shall be used for the City Maintenance Obligations or other capital improvements. At the conclusion of construction of the Venue, the City and BallCorps shall develop a long-term Capital Maintenance Schedule (the "Capital Maintenance Schedule") based on the maintenance plan prepared and developed by the Venue architect, Populous. The Board of Advisors and the City shall review and not unreasonably withhold, condition or delay its approval of an annual

maintenance budget covering City Maintenance Obligations (the “Annual Maintenance Budget”) to be recommended by BallCorps in consultation with the Board of Advisors each year in accordance with the timing and procedures to be mutually agreed in good faith between BallCorps and the City. The Annual Maintenance Budget shall be developed using (but not controlled by) the Capital Maintenance Schedule, but may be altered with consent of both BallCorps and the City Council. After the Revenue Protection Period, during any calendar year in which the City’s immediately preceding five-year annual average contribution to the Capital Maintenance Fund reaches or exceeds one and one-half percent (1.5%) of the hard construction costs of the Venue, such excess may, in the sole discretion of the City, be applied to the City’s Maintenance Obligations, the City’s Venue operating expenses, or such other Venue Area capital improvements as the City deems appropriate.

## **ARTICLE V**

### **CITY’S OBLIGATIONS**

In consideration of the covenants, terms, and conditions set forth in this Agreement, the City and BallCorps agree as follows:

A. Venue. Subject to the Project Contingencies, the City agrees to cause the Venue, and the Venue Area to be completed substantially consistent with the Plans and Specifications, and shall in all respects meet (i) the requirements of this Agreement; and (ii) all applicable federal, state and local zoning, fire and building codes, ordinances, rules and regulations. Subject to the Project Contingencies and Force Majeure Events, the City shall use all reasonable and best efforts to complete the Venue and Venue Area within the Project Budget at the earliest possible date and prior to April 1, 2020.

B. Lease. In consideration of BallCorps’ payments to the City cited in Article IV, as well as the terms and conditions contained in this Agreement, the City hereby leases and lets the Venue to BallCorps, and BallCorps leases and lets the Venue from the City, for the Term provided for in Article III. The Parties shall enter into a Memorandum of Lease to give record notice of the lease of the Venue from the City to BallCorps.

C. Parking.

1. BallCorps Parking Areas. For the Term of this Agreement, the City shall provide to BallCorps use of and access to the Parking Areas described on Exhibit V(C). BallCorps shall designate and notify the City in writing what portion of the Parking Area shall be allocated free of charge for all BallCorps staff, visiting teams, and game day personnel. This area shall be comprised of an “Exclusive Parking Area,” a “VIP” and suiteholder Parking Area (collectively “Special Parking Area”) and the remainder shall be the “Shared Parking Area” consisting of the number of spaces and with accessibility as described in Exhibit V(C). BallCorps shall designate the Special Parking Area for the Regular Season and the Non-Regular Season.

Notwithstanding Exhibit V(C) or the foregoing, the Parking Areas may be relocated and redeveloped by the City; provided, however, the City shall, at its expense, construct (prior to the loss of any such parking) alternate replacement parking of like quality in reasonable proximity to the current location, not fewer in number, and otherwise reasonably acceptable to BallCorps.

D. Security. The City, at its expense and sole discretion, shall determine and be responsible for providing all reasonable security necessary on the exterior of the Venue for all Venue Events and for the interior of the Venue for all City Events. BallCorps, at its expense and sole discretion, shall determine and be responsible for providing all security it deems necessary for the interior of the Venue for all BallCorps Events.

## **ARTICLE VI**

### **BALLCORPS' OBLIGATIONS**

A. Relocation Application & Baseball Authority Approvals. BallCorps shall deliver all approvals and consents of all Baseball Authorities to evidence to the City BallCorps' right and ability, subject to rules required by Baseball Authorities, to play the Club's home games at the Venue during the Term of this Agreement.

B. BallCorps Home Baseball Games. The Club shall play all of its BallCorps Home Baseball Games at the Venue, provided, however, the Club may from time-to-time hold a game (not more than two per season) at the ballpark of its major league affiliate ("MLB Game"). Attendance at any MLB Game shall count toward the calculation of BallCorps' Home Baseball Game Attendance and shall count toward the calculation and payment of Performance License Fees.

At BallCorps' sole cost and expense, BallCorps or an affiliate thereof will provide Venue Services throughout the Venue Area at all BallCorps Home Baseball Games. BallCorps and/or the Venue Manager, pursuant to the Management Agreement, will retain, employ, compensate, train, and manage sufficient numbers of personnel to provide such services in a quality and professional manner. BallCorps shall be responsible for all damage to the Venue or any portion thereof (exclusive of ordinary wear and tear) that occurs during a BallCorps Event.

C. City Events and BallCorps Non-Baseball Events. Pursuant to the terms of the Management Agreement, BallCorps shall provide Venue Services at City Events and BallCorps Non-Baseball Events.

D. Additional Development. BallCorps shall have the right to develop or enhance, at its expense, additional areas within the perimeter of the Venue Area (which development or enhancement will be consistent with and an addition to the overall Venue experience for visitors) with the consent of City, and further, which consent shall not be unreasonably withheld, conditioned or delayed. The City may not materially modify the Venue during the Term without the consent of BallCorps. Any additional development or

enhancement within the Venue Area by BallCorps will be subject to the approval of the City, which shall not be unreasonably withheld, conditioned or delayed.

E. Venue Maintenance. BallCorps, either directly or through the Venue Manager, shall perform all maintenance, restoration, replacement, and repairs for the Venue Area and all components thereof and improvements thereon, of whatever kind and nature, foreseen or unforeseen, as may be necessary to keep the entire Venue Area in first class condition and repair, including but not limited to the major maintenance, restoration, repair and replacement of all structural (including, without limitation the roofing and roof components) and concrete components, all heating, air conditioning, ventilating, plumbing, and electrical systems, playing surface replacement, field drainage systems, field lighting system (including field lighting installation and reinstallation), Venue scoreboard, Venue Area lighting, Parking Area improvements and lighting, grandstands, sound system, seating, bleachers, elevators, entry way area, glass, walls, roof, sidewalks and exterior landscaping maintenance, and all maintenance, repairs and restoration of Venue Equipment. The obligation to pay for such maintenance is set forth in Article IV(E) hereinabove.

F. Alcoholic Beverage Permit. BallCorps shall (either on its own behalf, through Venue Manager, or through a related entity acceptable to the City) obtain and maintain applicable alcoholic beverages permits in good standing at its expense throughout the Term. The City will assist, as appropriate, BallCorps' acquisition of a full liquor license applicable to appropriate areas within the Venue.

G. Team Name. BallCorps shall include the name "Madison" as the primary word in the Club's team name. However, in the event that BallCorps determines that this naming requirement should be revised not to include the word "Madison," then it will seek City's consent to amend this Agreement, and City will use all reasonable and best efforts to honor BallCorps' request, and City will not unreasonably withhold its consent.

## **ARTICLE VII**

### **CONCESSIONS; NOVELTIES & SOUVENIRS**

A. Concessions Manager. In consideration of the covenants, terms and conditions set forth in this Agreement, BallCorps and the City agree that BallCorps or an affiliate thereof shall act as the exclusive provider of Food and Beverage Concessions at the Venue pursuant but subject to the terms of the Management Agreement. BallCorps shall, at its sole discretion, but pursuant to the Management Agreement, have the right to subcontract or sublicense for the provision of Food and Beverage Concessions at the Venue to a qualified third party reasonably acceptable to the City. Any such third party will be subject to the same obligations as would BallCorps if it provided these services directly.

B. Novelties. Nothing contained in this Agreement shall be construed to limit the City from selling or authorizing a third party to sell Novelties and Souvenirs at City Events, provided that the City will not at any time sell or authorize the sale of Food and Beverage Concessions by parties other than the Venue Manager under the terms of the Management Agreement nor can it sell baseball novelties. The City shall solely retain all



revenue from the sale of its own Novelties and Souvenirs at the Venue during City Events. Any such sales by the City shall be from temporary displays. The City will not be entitled to sell merchandise out of the Team Store(s). Notwithstanding the forgoing, or anything else herein to the contrary, BallCorps shall retain all revenue from the sale of all Club-related Novelties and Souvenirs at all Venue Events and from all sales of any type from the Team Store. To the extent permitted by law, the City shall not provide vendor licenses allowing the sale of food and beverage or of baseball novelties on the sidewalks within the Venue Area.

## **ARTICLE VIII**

### **VENUE NAMING RIGHTS**

BallCorps will work in good faith, with the cooperation and assistance of the City, to market the naming rights for the Venue (the "Naming Rights") to a Naming Rights Sponsor. After payment to BallCorps for advertising inventory reasonably used in securing such Naming Rights, the City and BallCorps shall share all Naming Rights revenues. For the initial term, and all renewal terms, of the Naming Rights Agreement, which is anticipated to be 10-15 years, the City and BallCorps shall each receive fifty percent (50%) of all revenues related to Naming Rights for the Venue, net of costs for signage and inventory. The Naming Rights sponsorship agreement shall be mutually agreed upon between the City and BallCorps.

## **ARTICLE IX**

### **VENUE USE**

#### **A. BallCorps' Rights and Obligations.**

1. Use of Venue Prior to Completion. BallCorps shall be permitted to use appropriate portions of the Venue, consistent with the terms and conditions of this Agreement including the BallCorps Areas as soon as such areas are completed and approved for occupancy. The City shall use its best efforts to cause to have issued appropriate occupancy permits for the same as soon as such areas are completed. The Parties shall establish the various rights and responsibilities of the Parties for such use prior to the issuance of said occupancy permits.

#### **2. BallCorps Home Baseball Games.**

(a) Scope. BallCorps shall have exclusive use of the Venue for conducting BallCorps Home Baseball Games during the Term. Such use shall include that portion of each such day reasonably necessary for the event.

(b) Ticketing. BallCorps shall be exclusively responsible for all ticket printing, sales and distribution related to BallCorps Home Baseball Games. The Venue Manager shall provide all ticket services for all City Events and other BallCorps Events, at no additional charge. In satisfaction of this obligation, BallCorps shall have the right to

designate the identification of seating at the Venue and to conduct such ticket sales at the Venue box office at all times it deems proper. BallCorps may, in its discretion, issue complimentary admissions to each BallCorps Home Baseball Game to BallCorps and visiting team personnel, guests and officials and representatives of the media. BallCorps shall have the right to charge any amount it deems appropriate for tickets for admission to BallCorps Home Baseball Game.

(c) BallCorps Home Baseball Game Promotion Tickets.

BallCorps shall provide at no cost to the City, for the City's use, as may be reasonably requested by the City complimentary tickets not to exceed twenty five (25) box seat tickets per event for admission for BallCorps Home Baseball Games. These tickets shall be used only by City personnel and their guests and shall not be resold or otherwise distributed. BallCorps will provide use of a suite for ten (10) games per season at no cost to the City on dates each season to be mutually agreed upon.

3. Suites / Specialty Seating.

(a) Suites. For the Term of this Agreement, BallCorps shall have the exclusive right to sublease or sublicense each of the Suites, subject to the City's rights set forth in Section IV(A)(2)(c) above, for BallCorps Home Baseball Games. Any such sublessee or licensee shall, subject to reasonable limitations or conditions which may be established by the City, have the right to purchase from the City twenty (20) tickets to each City Event (which shall entitle the sublicense to occupy the suite for that event) and shall have the right to utilize the suite at any non-ticketed City Event.

(b) Suites, Outdoor Decks, and Furnishings. The Plans and Specifications attached as Exhibit II(GG) set forth the number, capacity, furnishings and amenities of Suites and Outdoor Decks.

4. Administrative Offices. As described in the Plans and Specifications and within the Project Budget, BallCorps shall be provided professional office space for no less than twenty-five (25) to thirty (30) BallCorps' professional business staff. In order to facilitate the satisfaction of its obligations undertaken pursuant to this Agreement and to perform its business as anticipated under the Agreement, BallCorps shall at all times during the Term of this Agreement have the right of access to and exclusive use of all BallCorps Areas. All equipment, desks, phones, and other personal property required for the Administrative Offices shall be BallCorps' sole cost and responsibility.

5. Team Store and Box Offices. During the Term of this Agreement and any early occupancy of the Venue as such occupancy is permitted pursuant to Subparagraph 1 above, BallCorps shall have the exclusive right to occupy and operate the Team Store.

6. City Control. Subject to BallCorps' license rights during the Term of this Agreement, the City does not relinquish and does retain full ownership of the Venue and Venue Area. Therefore, all duly authorized representatives of the City shall have reasonable access to all areas of the Venue and Venue Area at any time and on any occasion.

## **ARTICLE X** **SCHEDULING**

It is understood that BallCorps shall, during the Term, be granted priority use of the Venue for BallCorps Home Baseball Games and exhibition baseball games. Nonetheless, the City and BallCorps agree to work together and in good faith to efficiently and effectively accomplish a scheduling of events at the Venue. As such, the Parties have adopted the following scheduling procedure:

A. Proposed Schedule/City Events. As soon as a Southern League Schedule is approved but no later than January 15 of each year, BallCorps shall provide the City a schedule of BallCorps Home Baseball Games and Club practice schedules including potential post-season tournament game dates as accurately as possible. Prior to January 15 of each year, BallCorps shall deliver to the City those dates upon which BallCorps desires to conduct up to ten (10) BallCorps non-baseball events including, but not limited to, concerts, festivals, charitable events, and other appropriate uses at the Venue during such year. Within thirty (30) days thereafter, the City shall provide BallCorps with those dates upon which the City desires to conduct up to ten (10) City Events at the Venue during such year. Subject to priority use of the Venue by BallCorps for professional baseball use, the parties will work together in good faith to permit use of the Venue for high school baseball teams in Madison County as a City Event. Night games will be limited in number by mutual agreement. Utilities will not be charged for high school baseball games, but field preparation, staffing, cleanup, etc. will be charged. On or before February 15 of each year, BallCorps will establish a schedule of charges for actual costs which would be incurred and charged for Venue use.

B. Remaining Dates. Thereafter, all remaining dates, or series of dates for multi-day events, may be utilized on a first-come, first-served basis by providing written notice to the other party, with the express understanding that use of the field will be limited from time to time both by Club practices and to preserve the quality and safety of the field surface in accordance with Article IX. The Parties agree to work together in good faith and with the Venue Manager under the terms of the Management Agreement to schedule any events earlier than the process outlined above may contemplate. The Parties also agree to work together in conjunction with the Board of Advisors to maximize usage of the stadium and to, wherever possible, reschedule smaller or movable events to accommodate larger and/or less movable events.

## **ARTICLE XI** **MARKETING**

Except as otherwise set forth herein, each Party shall be responsible for its own marketing. BallCorps shall be responsible for and have the exclusive right of marketing BallCorps Events. The City shall be exclusively responsible for marketing City Events.

## **ARTICLE XII** **ADVERTISING**

A. Permanently Affixed Venue Signage and Scoreboard Advertising. BallCorps shall have the exclusive right to sell, and collect the revenues from, all Permanently Affixed Venue Signage, and Scoreboard Advertising for BallCorps Home Baseball Games. The City can use Scoreboard Advertising and temporary signage as it deems appropriate during City Events.

B. Advertising at City Events. Subject to the limitations contained in this Agreement, the City shall have the right to sell and retain revenue generated from the sale of advertising associated with City Events, including but not limited to, temporary signage, advertising on the field-side scoreboard message center and video display, print media and broadcast media. Such advertising shall be provided at the City's cost and shall not replace or cover existing advertising except where appropriate to secure a particular event.

## **ARTICLE XIII** **BROADCAST RIGHTS**

A. BallCorps' Broadcast Rights. BallCorps shall have exclusive ownership and control over Broadcast Rights associated with BallCorps Home Baseball Games. All revenue generated by BallCorps relating to such Broadcast Rights shall be retained exclusively by BallCorps.

B. City's Broadcast Rights. The City shall have exclusive ownership and control over Broadcast Rights associated with City Events. All revenue generated by the City relating to such Broadcast Rights shall be retained exclusively by the City. All costs incurred in connection with the broadcast of City Events shall be the responsibility of the City.

C. Special Events Broadcast Rights. The Parties shall determine the ownership and control over and the allocation of revenue and costs associated with Broadcast Rights associated with special events.

## **ARTICLE XIV** **UTILITIES**

The parties agree that in consideration of the rights and obligations set forth in this Agreement, BallCorps shall be obligated to pay sixty percent (60%) of Utility expenses incurred by either Party in connection with the operation of the Venue and Venue Area and the City shall pay forty percent (40%). The City will use best efforts to obtain favorable rates

from local Utility providers, but the Parties acknowledge that Utility providers make the rate determinations. Utilities shall be in the name of BallCorps, and BallCorps shall have responsibility for payment of all bills and charges for such Utilities.

## **ARTICLE XV**

### **EQUIPMENT**

A. BallCorps' Obligations. BallCorps shall supply, maintain, repair and replace, at its expense, its own office equipment and furniture for its administrative offices as preliminarily described on a furniture, fixtures and other equipment list, and shall maintain, repair and replace all baseball equipment.

B. City's Obligations. The City, within the Project Budget, will provide the use of all equipment as preliminarily set forth on Exhibit XV(B) attached hereto (the "Venue Equipment").

C. Food and Beverage Concessions Equipment. BallCorps shall purchase and install all Food and Beverage Concessions Equipment necessary to make the Venue fully operational, consistent with the Plans and Specifications.

## **ARTICLE XVI**

### **COVENANTS**

A. BallCorps' Covenants.

1. Taxes and Encumbrances. BallCorps shall pay promptly when due any taxes due to the City that are the responsibility of BallCorps to collect and/or pay. To the extent any work is done at the request of and for the sole benefit of BallCorps and for which a supplier or contractor has lien rights arising from nonpayment, BallCorps further covenants that it will not permit any mechanics liens or similar encumbrance to exist against the Venue or any property therein and shall, within thirty (30) days of any such lien or encumbrance being asserted against the Venue or any property therein as a result of action or inaction by BallCorps, either cause the same to be released of record, or obtain title or other insurance coverage satisfactory to the City over such lien and proceed diligently to contest the same in good faith.

2. Membership in the League. BallCorps agrees to maintain in good standing its membership in the Southern League, or any direct successor to the Southern League, or an equal or higher classification of affiliated team, throughout the Term hereof.

3. Equal Employment Opportunity And Employment of City Residents. BallCorps agrees and covenants to the City that it is presently and will continue to be an equal opportunity employer and at all times shall comply with the laws and regulations that prohibit discrimination. Further, BallCorps agrees and covenants to the City that it will use commercially reasonable

efforts to engage the services of City residents who are qualified for Venue Services performed pursuant to this Agreement.

4. Prohibition Against Dangerous Materials and Substances. BallCorps agrees not to bring into the Venue any material, substance, equipment or object that is likely to endanger the life or to cause bodily injury to any person within the Venue, or which is likely to constitute a hazard to property therein without the approval of the City. The parties acknowledge that common field maintenance chemicals and supplies, cleaning solvents, and fireworks displays are all to be reasonably used at the Venue. The City will not indemnify BallCorps for any damage caused by such materials and substances at a BallCorps Event.

B. City's Covenants/Compliance. The City shall construct the Venue in substantial compliance with the Plans and Specifications, all applicable building, health, safety, bidding, procurement, traffic and zoning ordinances which apply to the Venue, including the Americans With Disabilities Act, as well as all applicable Environmental Laws.

## **ARTICLE XVII**

### **INDEMNIFICATION AND INSURANCE**

#### A. Indemnification

1. Indemnification of the City by BallCorps. BallCorps agrees to indemnify and hold harmless the City and its respective officers, directors, elected officials, duly authorized agents, and employees from any and all claims brought for personal injury, death, property damage and any other losses, damages, charges or expenses, including attorneys' fees, incurred in connection with, or by reason of any act, omission or negligence of BallCorps or the Venue Manager or its, or their, duly authorized agents, or any breach of this Agreement, in connection with BallCorps' or the Venue Manager's activities pursuant to this Agreement.

2. Indemnification of BallCorps by the City. To the extent allowed by law and subject to approval by the City's municipal insurance provider, subject to any tort claim limitations, and up to the extent of any applicable insurance proceeds, the City agrees to indemnify and hold harmless BallCorps and its members, officers, directors, duly authorized agents, and employees from any and all claims brought for personal injury, death, property damage and any other losses, damages, charges or expenses, including attorneys' fees, incurred in connection with, or by reason of any act, omission or negligence of the City or its officers, directors, elected officials, duly authorized agents, and employees, but only for those acts or omissions in the line and scope of their respective duties, or any breach of this Agreement, in connection with the City's activities pursuant to this Agreement.

B. BallCorps Insurance Policies. BallCorps shall, effective on the date of BallCorps occupancy of the Venue, obtain and maintain throughout the Term of this Agreement, comprehensive public liability coverage including personal injury liability and contractual liability; if on a commercial general liability form, the limit per occurrence shall be One Million Dollars (\$1,000,000) and an aggregate of Five Million Dollars (\$5,000,000) combined single limit (CSL) per occurrence and include bodily injury and property damage liability; automobile coverage with liability limits of One Million Dollar (\$1,000,000) combined single limits (CSL) bodily injury and property damage per accident; a general umbrella policy of Five Million Dollars (\$5,000,000); and workers compensation coverage at statutory limits to protect BallCorps' permanent and temporary employees. Such coverage shall be evaluated every fifth (5<sup>th</sup>) year during the term hereof and BallCorps, in conjunction with the City, will determine if increases in the amount of coverage are reasonably warranted. BallCorps will name the City as an additional insured on the public liability policy and provide certificates and endorsements of all insurance or original policies as they shall be on file prior to the beginning of the Term of this Agreement. BallCorps' policies shall not include an exclusion for fireworks or other dangerous materials or substances, and its policies shall provide for thirty (30) days' prior notice to the City for any material amendments to or cancellations of coverage. Insurance coverage required herein shall be furnished by a company approved by the insurance commission of the State of Alabama.

C. City Insurance Policies. City shall maintain property and casualty insurance throughout the Term of this Agreement with respect to the Venue, in such amounts and covering such risks as are usually insured against by holders of property similar to the Venue. The City's municipal insurance provider shall provide the insurance coverage required herein.

## **ARTICLE XVIII**

### **DESTRUCTION OF VENUE**

A. Restoration after Destruction. If the Venue or any part of the Venue Area is wholly or partially destroyed, the City shall, at its expense, promptly commence and diligently complete the restoration of the Venue (or applicable portion of the Venue Area) to substantially the same condition as of the date of the Venue's original completion, with all subsequent improvements, reasonable wear and tear excepted. However, City's financial obligations in such event shall not exceed Fifteen Million Dollars (\$15,000,000). If the Venue should be substantially destroyed during the last five (5) years of the Term, the City may terminate this Agreement. Any repair activities shall be timed and organized in such a manner to facilitate BallCorps' ability to play the BallCorps Home Baseball Season games at the Venue and to the degree feasible, and the City agrees to cooperate with BallCorps on all such decisions.

B. Payment of Rent. Should the Venue be made untenable by BallCorps as a result of such destruction, BallCorps' obligation to maintain the Venue shall abate until the Venue is restored as detailed above. BallCorps' payment obligations pursuant to Article IV shall abate during the period in which the Venue is totally unusable by BallCorps. If only a portion of the Venue is rendered unusable, BallCorps' payment obligations shall be

equitably reduced, as determined by the Parties' representatives in good faith, taking into account BallCorps' prior use of the destroyed portion of the Venue and the potential of such portion to generate revenue for BallCorps based upon attendance over the immediately preceding three (3) year period. Neither party shall be liable to the other for lost profits during such time.

C. Assistance of the City in Locating a Temporary or Permanent Alternate Facility. If the Venue or a material portion of the Venue becomes unavailable on a temporary basis by reason of either partial destruction or repair or restoration, or for any other reason, the City shall utilize commercially reasonable efforts to assist BallCorps in locating a temporary facility in which the Club may play home baseball games until the Venue is restored.

## **ARTICLE XIX** **CONDEMNATION**

In the event that any portion of the Venue or material portion of the Venue is taken from BallCorps pursuant to any right of eminent domain exercised by the State of Alabama, and such taking renders the Venue unfit for its intended purpose, BallCorps shall receive a portion of any award granted with respect to such taking. In the event that any portion of the Venue or material portion of the Venue is taken from BallCorps pursuant to any right of eminent domain exercised by any governmental entity or pursuant to any governmental order BallCorps shall have the independent right to make a claim against the condemner for and retain any award based thereon for the reasonable value of lost profits, improvements made to the Venue by BallCorps, if any, and for the expenses, attorney fees and costs incidental to relocating from the Venue including, but not limited to, the lost value of this Agreement. Finally, in such event, BallCorps shall have the right to terminate this Agreement within One Hundred Eighty (180) days of such taking.

## **ARTICLE XX** **FORCE MAJEURE**

BallCorps and the City agree that neither party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) tornado, flood, fire, earthquake or explosion; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) government order or law; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency; (h) strikes, labor stoppages or slowdowns or lockouts; (i) suspension of play of baseball by the Baseball Authorities; (j) shortage of players, adequate power or transportation facilities; and (k) other similar events beyond the reasonable control of the party impacted by the Force Majeure Event (the "Impacted Party"). The Impacted Party shall promptly give notice of the Force Majeure Event to the other party, stating the period of time the occurrence is expected to continue. The Impacted Party shall use diligent efforts to end the failure or



delay and ensure the effects of such Force Majeure Event are minimized. The Impacted Party shall resume the performance of its obligations as soon as reasonably practicable after the removal of the cause.

## **ARTICLE XXI**

### **ASSIGNABILITY AND TRANSFERABILITY**

A. City Assignment. The City may, without consent of BallCorps and pursuant to Alabama law, assign this Agreement for administrative and operational purposes to an authority or authorities, provided, that if such an assignment should be made, (i) such assignee shall be able to enforce the provisions of this Agreement pursuant to such assignment without the further consent of the City, and (ii) the City or its assignee shall remain obligated hereunder in all respects.

B. BallCorps Assignment.

1. Assignment of Agreement: With the written consent of the City, which consent shall not be unreasonably withheld, conditioned or delayed, provided BallCorps is not in default hereunder, BallCorps may assign its rights and responsibilities as described in this Agreement and in the Management Agreement to an entity (i) with operational and financial capabilities reasonably satisfactory to the City, (ii) which provides a MiLB professional affiliated baseball Club in the same manner and quality as contemplated in this Agreement, and (iii) assumes all obligations of BallCorps under this Agreement. The events of (i) a sale or transfer of control of more than 51% of equity ownership of BallCorps, and (ii) any change of management or control of BallCorps that results in the Baseball Authorities requiring the filing of a Control Interest Transfer Application pursuant to Major League Rule 54, or the then-current procedure for team ownership transfer of control required by the Baseball Authorities, shall also constitute an assignment requiring the City's prior written consent hereunder, which shall not unreasonably withheld, conditioned, or delayed. Assignment shall not be effective until BallCorps obtains and provides to the City written permission of the Baseball Authorities for such assignment.

2. Assignment of Suites: BallCorps shall have the right to sublease the Suite portion of the Venue. BallCorps shall ensure that any sublessor abides by all of the applicable terms and conditions of this Agreement, and the term of any sublease shall not extend beyond BallCorps' Term.

## **ARTICLE XXII**

### **DEFAULT AND TERMINATION**

A. Event of Default by BallCorps. The occurrence of any of the following events shall constitute an Event of Default by BallCorps after thirty (30) days' prior written

notice detailing the alleged default with a reasonable opportunity for BallCorps to cure such alleged Default:

1. Any warranty or representation of BallCorps under this Agreement is materially false when made;

2. BallCorps fails to pay any amounts due pursuant to Article IV of this Agreement within thirty (30) days' after written notice of failure to pay from the City;

3. BallCorps files for bankruptcy or any involuntary proceedings under bankruptcy law, insolvency act, or similar law for the relief of debtors are instituted against BallCorps, or a receiver or trustee is appointed for all or substantially all of the property of BallCorps, and such proceedings are not dismissed or vacated within ninety (90) days after the institution of appointment;

4. BallCorps ceases to own a validly existing Minor League Baseball team.

5. BallCorps fails to perform or diligently commence to cure any other obligation under this Agreement (other than payment of money) within thirty (30) days' written notice from the City

B. Remedies for a Default by BallCorps. Upon any Event of Default of BallCorps that remains uncured beyond the applicable cure periods, extensions of which shall not exceed ninety (90) days, then City may terminate this Agreement as its sole and exclusive remedy. However, the City shall have the right to collect rents and payments due to City as of the date of termination (with no acceleration or claim for payments which may otherwise become due after the date of termination).

C. Event of Default by City. In the event that City materially breaches, violates, or fail to fully perform any provision contained in this Agreement, BallCorps may upon thirty (30) days written notice thereof, terminate this Agreement; provided, however, that the City shall have the right and opportunity to cure the default within said thirty (30) day period, or if such breach, violation or non-performance cannot be cured within a thirty (30) day period, to continue diligently and in good faith to effect such cure within such period, provided that, unless otherwise provided herein, in no event shall such opportunity to cure exceed ninety (90) days after receipt of such notice. In the event that such breach, violation or non-performance is not cured within said thirty (30) day period or any authorized extension thereof, then this Agreement may be terminated by the non-breaching party upon the expiration of such period. Notwithstanding termination, the non-breaching Party shall be entitled to reimbursement for damages and costs, including reasonable attorneys' fees arising as a result of such breach.

D. Termination Relating to Project Contingencies. Each Party shall have the right to terminate this Agreement as set forth in Article III(C)(3).

In no event shall either party be liable to the other for Punitive or Consequential Damages.

### **ARTICLE XXIII** **BOARD OF ADVISORS**

BallCorps and the City will create an informal, unincorporated Board of Advisors to make recommendations regarding the operation and maintenance of the Venue. It is the intention of the parties that the Board of Advisors will be given substantial deference with regard to all matters herein involving its input. The Board of Advisors shall consist of a minimum of two (2) representatives appointed by the City and one (1) representative appointed by BallCorps. The Board of Advisors shall, subject to the terms of this Agreement and the Management Agreement, make recommendations regarding the operations and management of the Venue in accordance with customary and best practices for similar MiLB venues. However, the Board of Advisors will not have any legal standing or authority to make binding decisions or to dictate the expenditure of any City funds without the City Council's prior approval.

### **ARTICLE XXIV** **MISCELLANEOUS**

A. Governing Law. This Agreement shall be in governed accordance with the laws of the State of Alabama.

B. Submission to Jurisdiction. Any legal suit, action, or proceeding arising out of or relating to this Agreement shall be instituted in the courts of the State of Alabama and County of Madison, and each party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.

C. Entire Agreement. This Agreement, together with the Management Agreement, all of even date herewith, constitutes the final, complete and exclusive written expression of the intent of the Parties with respect to the subject matter hereof which will supersede all previous verbal and written communications, representations, agreements, promises or statements.

D. Authority. BallCorps and the City, respectively, each represent that it has the authority to be bound by the terms of this Agreement. Once executed by both Parties, this Agreement will constitute a valid and binding agreement, enforceable in accordance with its terms.

E. Costs and Attorney Fees. The Parties hereto agree to pay all expenses incurred by the other in enforcing the provisions of this Agreement, including but not limited to attorney fees, costs and expenses. The Party prevailing in any litigation arising out of any

dispute concerning this Agreement shall be entitled to recover all expenses incurred, including without limitation, reasonable attorney fees and related costs and expenses.

F. Mutual Dependency and Severability. All rights and duties contained in this Agreement are mutually dependent on and one cannot exist independent of another, provided that if any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, and if such holding does not affect the ability of BallCorps to perform and have access to the Venue for all of its intended business operations as contemplated herein, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision was not contained herein.

G. Notices and Addresses. All notices required to be given under this Agreement shall be given by (1) certified mail priority mail with proof of delivery, (2) electronic mail, or (3) sent via facsimile followed on the same day by recognized overnight courier, in all cases addressed to the proper Party to the following addresses, or at such other address as may be subsequently given in writing pursuant to this Section, and shall be deemed given on the day received:

IF TO BALLCORPS:

BallCorps, LLC  
Attn: Ralph E. Nelson, Chief Executive Officer

\_\_\_\_\_  
(To be provided)

Telephone: \_\_\_\_\_  
Email: rnelson@ballcorps.com

With a copy to:

Faegre Baker Daniels LLP  
Attn: Timothy J. Haffner  
110 W. Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Telephone: 260-460-1616  
Email: timothy.haffner@faegrebd.com

IF TO THE CITY:

City of Madison  
Attn: Office of the Mayor  
100 Hughes Rd.  
Madison, AL 35758  
Telephone: 256-772-5603  
Email: mayors.office@madisonal.gov

With a copy to:

City Attorney's Office  
Attn: Office of City Attorney  
100 Hughes Rd.  
Madison, AL 35758  
Telephone: 256-772-5603  
Email: Megan.Zingarelli@madisonal.gov

H. Amendment, Modification, or Alteration. No amendment, modification or alteration of the Terms of this Agreement shall be binding unless in writing, dated subsequent to the date hereon and duly executed by the Parties herein.

I. Rights and Remedies Cumulative. The rights and remedies provided by this Agreement are cumulative and the use of any right or remedy by either Party shall not preclude or waive its rights to use any or all other remedies. Said rights and remedies are given in addition to any other rights the Parties may have by law, statute, ordinance or otherwise.

J. The Essence. Time is of the essence for this Agreement.

K. Counterparts; Facsimile. This Agreement may be executed in any number of counterparts and delivered by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means, each of which shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

L. Headings Only for Reference. The titles of articles and sections of this Agreement are for reference purposes only and shall be of no binding effect.

M. Valid Limited Liability Company. BallCorps represents that as of the date of the execution of this Agreement BallCorps, LLC is organized and in good standing under the laws of the State of Arizona and authorized to do business in the State of Alabama, that it is duly authorized to enter into this Agreement and has taken all requisite corporate action to obtain such authorization and that no consent of or notice to any other individual, private or public entity or governmental authority is required in connection with the execution, delivery and performance of this Agreement. BallCorps will file all necessary paperwork and fees with the Alabama Secretary of State on an annual basis in order to maintain such compliance and will provide the City annually with a certificate of good standing from the Alabama Secretary of State.

N. Prohibition Against Food and Beverage Being Brought Into the Venue. BallCorps may request the City to post signs in appropriate locations in the Venue which shall prohibit patrons from bringing any food, beverages, beverage containers or alcoholic beverages into the Venue.

O. Status of Parties. The parties hereto shall be deemed and construed as independent contractors with respect to one another for all purposes and nothing contained in this Agreement shall be determined to be creating a partnership or joint venture between

BallCorps and the City with respect to BallCorps' activities conducted in the Venue or the Venue Areas pursuant to the terms of this Agreement.

P. Waiver. The waiver by either BallCorps or the City of any default or breach by the other Party of any of the provisions of this Agreement shall not be deemed a continuing waiver or waiver of any other breach by the other Party of the same or another provision of this Agreement.

Q. Waste or Nuisance. BallCorps shall not commit or permit any waste on or about the Venue or the Venue Area during the Term of this Agreement nor shall it maintain, commit or permit the maintenance or commission of any nuisance on or about the Venue or use the Venue for any unlawful purposes.

R. Binding Effect/Benefit. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective affiliates, successors and assigns.

S. References to the City. All references to the City in this Agreement shall be deemed to also be references to such officers, elected officials, or employees or other designees of the City as may be appropriate to implement the terms of this Agreement.

T. Exhibits; Attachments. All exhibits or attachments attached to this Agreement are incorporated into and are a part of said Agreement as if fully set out herein. The Parties acknowledge that certain exhibits are subject to further approvals and that the signatories to this Agreement are authorized to approve updates to Exhibits as they are finalized, provided that any amended Exhibit does not (i) increase the financial liability of either party, or (ii) materially alter the rights or obligations of either party, in which case, the amended Exhibit would have to be approved by the City Council and BallCorps.

U. BallCorps' Property Loss and Damage. Nothing herein shall be construed to create a bailment relationship between the City and BallCorps or the Club concerning any property brought on the premises of the Venue by BallCorps or the Club unless such property is delivered into the possession of the City.

V. Employee Status. It is understood and agreed that no agent, servant or employee of BallCorps or any of its subcontractors shall under any circumstances be deemed an agent, servant or employee of the City, and that no agent, servant or employee of the City shall be under any circumstances deemed an agent, servant or employee of BallCorps.

W. Cooperation. The City and BallCorps agree to work together in good faith to assure a consistent and effective design throughout the Project and to coordinate construction and project management.

X. Fast Tracking. The City will assist, as appropriate, in "fast-tracking" permitting any clearances to assist in the timely completion of each phase of the Project.

Y. Permits. The City will work cooperatively with BallCorps to obtain such building permits, noise and light ordinance permits and/or clearances as necessary to alter street and traffic flow as per the City's master plan and in obtaining such other permits and clearances as may be required in order to complete the project as contemplated hereunder.

Z. No Tax. The City will not impose a ticket/admission/amusement tax applicable to BallCorps Home Baseball Games during the term hereunder, unless such tax is applicable to all professional sports and entertainment facilities in the City. This provision does not apply to any existing generally applicable sales, use, or other taxes.

AA. Event Times. BallCorps shall have permission from the City to conduct games and/or Club events during specified times, including the right to hold day games as it deems appropriate and reasonable time periods to allow for concerts and other post-game events following the conclusion of BallCorps Home Baseball Games or other professional baseball games.

BB. Fireworks. So long as permitted by law, the City will assist BallCorps so that BallCorps can hold an acceptable number of firework nights per each season. BallCorps shall assume liability for all of its fireworks displays at the Venue, as well as any damage and cleaning resulting from fireworks displays.

CC. Signage. The City will work with the Department of Transportation and other appropriate authorities to alter or construct new directional signage on freeways and other major thoroughfares, directing vehicles to the Venue. The City will assist BallCorps in obtaining permission and approval to hang banners within City limits (subject to reasonable restrictions and applicable sign ordinances) to generate interest in the development of the Project, and major events being held at the Venue.

DD. Alabama Immigration Law. By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

EE. Open Trade. By signing this Agreement, BallCorps represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

FF. Compliance with Baseball Rules. The Parties are aware of the provisions contained in the Professional Baseball Agreement, the National Association Agreement, and the Southern League By-Laws. Each of the Parties represents to each other to date it has acted, and covenants it shall continue to act, in material compliance with the National Association Agreement, the Professional Baseball Agreement, and the Southern League Documents in connection with the transaction contemplated by this Agreement

including (subject to appropriate confidentiality protections acceptable to Parties) providing reasonable financial and other information necessary to obtain Approval for the transaction contemplated by this Agreement.

GG. Baseball Approvals. BallCorps shall (a) use its commercially reasonable best efforts to apply for all Baseball Agreement Approvals, including, apply to the President of the MiLB and the Southern League President for approval of the Agreement in accordance with and pursuant to the applicable provisions of the National Association Agreement, Professional Baseball Agreement, and the rules and regulations of any Baseball Authorities, (b) use its commercially reasonable best efforts to complete all such filings and related requirements, and (c) provide City with evidence of the same. Such approvals are recognized by the Parties to be in the sole and absolute discretion of the applicable Baseball Authority. City shall fully cooperate with BallCorps in all reasonable respects, at no cost or expense to City, in seeking such approval, including the timely filing of all documents and information required of BallCorps by the Southern League, Minor League Baseball, and/or the Office of the Commissioner of Baseball in connection with such application(s). BallCorps shall immediately inform City if any Baseball Authority indicates its approval may be denied or delayed for any reason.

HH. City Right to Audit. Subject to a confidentiality agreement to be entered into between BallCorps and the City, BallCorps shall annually provide its audit to the City's independent accountants and limited City personnel for all of its activities at the Venue each year regarding the sharing of revenue and expenses. The City, at its expense, shall have reasonable rights to audit and verify any financial records of BallCorps documenting the generation of Venue Revenue. In the event the City determines an error has been made by BallCorps or any of its agents or consultants, accounting for a five percent (5%) or more deficiency in the Revenue otherwise payable to the City under this Agreement, BallCorps shall reimburse the City for any reasonable expenses it incurs in such audit. Any audits under this Section shall be done in a fashion to avoid disruption of the ordinary business of BallCorps, and BallCorps shall cooperate with the City during any such audit.

II. Architectural Fees. At the time of the City's closing of the public financing for the construction of the Venue, the City shall reimburse BallCorps for expenses incurred by BallCorps with Populous, Inc., in the design of the Venue prior to the execution of this Agreement. At the present time such expenses are approximately Five Hundred Thousand Dollars (\$500,000). This reimbursement for architectural fees will not cause the Project Budget to be exceeded, and in the event that any portion of the reimbursement of the architectural fees, when added to construction costs, exceeds the Project Budget, BallCorps shall not be reimbursed for any portion of the amount listed in this paragraph exceeding the Project Budget.

JJ. Recitals. All Recitals of this Agreement are incorporated into and are a part of said Agreement as if fully set out herein.


***[Remainder intentionally blank. Signature pages follow.]***



IN WITNESS WHEREOF, the Parties hereunto set their hands and seals on the date written below.

**BALLCORPS, LLC,**  
an Arizona limited liability company

DATE: 2/13/2018

BY:   
Ralph E. Nelson, Jr.,  
Chief Executive Officer

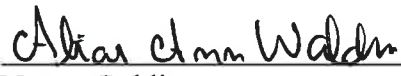
STATE OF Alabama

COUNTY OF Madison

I, the undersigned Notary Public, in and for said County in said State or for the State at Large, hereby certify that Ralph E. Nelson, whose names as Chief Executive Officer of BallCorps, LLC, an Arizona limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Chief Executive Officer and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Sworn to and subscribed before me this the 13<sup>th</sup> day of February, 2018.

[NOTARIAL SEAL]


  
Notary Public  
My Commission Expires: 7/30/19

**ALICIA ANN WALDEN**  
Notary Public, State of Alabama  
Alabama State At Large  
My Commission Expires  
July 30, 2019

**THE CITY OF MADISON, ALABAMA,**  
an Alabama municipal corporation

DATE: 02/13/2018

BY:   
Paul Finley, Mayor

Attest:   
Melanie A. Williard  
City Clerk-Treasurer


STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public, in and for said County in said State or for the State at Large, hereby certify that Paul Finley and Melanie A. Williard, whose names as Mayor and the City Clerk-Treasurer, respectively, of the City of Madison, Alabama, are signed to the foregoing instrument, and who are known to me, acknowledged before me on this day that, being informed of the contents of the instrument, they, as such officials and with full authority, executed the same voluntarily for and as the act of the City of Madison, Alabama, an Alabama municipal corporation.

Sworn to and subscribed before me this the 13<sup>th</sup> day of February,  
2018.

[NOTARIAL SEAL]

  
Notary Public  
My Commission Expires: 7/30/19

**ALICIA ANN WALDEN**  
Notary Public, State of Alabama  
Alabama State At Large  
My Commission Expires  
July 30, 2019

## SUMMARY OF EXHIBITS

<u>Exhibit</u>	<u>Description</u>
II(Y)	Management Agreement
II(GG)	Plans and Specifications
II(MM)	Site
II(TT)	Venue
II(UU)	Venue Area
V(C)	Parking Areas
XV(B)	Venue Equipment

**EXHIBIT II(Y)**

**Management Agreement**

**(See Attached)**

**EXHIBIT II(GG)**

**Plans and Specifications**

**TO BE PROVIDED**

**INTERIM PLANS ATTACHED**

**Site**



## EXHIBIT II(TT)

### Venue



## EXHIBIT II(UU)

### Venue Area





## EXHIBIT V(C)

### Parking Areas



## **EXHIBIT XV(B)**

### **Venue Equipment**

Venue Equipment is grouped in four categories: Furniture, Fixtures and Equipment; Scoreboard; Equipment and Specialties; and Audio Visual. A not to exceed budget allowance for each category is shown. Savings in one category may allow for an increase in another category.

#### **1. Furniture, Fixtures and Equipment - \$1,100,000 budget allowance**

- Artwork
- Athletic, Recreation & Therapeutic Equip
- Audio Visual Equip - Projectors, etc.
- Banners & Flags
- Closet Specialties
- Furniture
- Live Plants
- Maintenance Equip
- Medical & Hospital Equip
- Medical Equip/Cabinets for Team/Visitors
- Office Equipment
- Padding - Outfield and Field Walls
- Projection Screens
- Trash Receptacles

#### **2. Scoreboard - \$750,000 budget allowance**

### 3. Equipment and Specialties - \$1,250,500 budget allowance

	Budgeted Quantity
Bullet-resistant Protection - ticket windows	6
Chalkboards & Tackboards	1
Directories & Bulletin Boards	1
Exterior Sun Control Devices	1
Fall Arrest Harness and cable system on Canopy	1
Fire Protection Specialties	1
Flagpoles	3
Flat screen TV's	
Indoor	62
Outdoor - not in sunlight	23
Outdoor - in sunlight	20
Floor Mats & Frames	
Loading Dock Equipment	2
Lockers & Benches	
Home Team Players - 36" Custom	30
Manager	1
Visitors	28
2 Auxiliary Locker Rooms	29
Coaches	14
Officials	8
Netting behind homeplate	1
Residential Appliances (Suites)	16
Residential Appliances (Clubhouses)	2
Rolling Grilles & Screens	5
Security & Vault Equip - In Ticketing	
Signage & Graphics	
Wayfinding	
Concession Signage	
Building Signage (excludes sponsor signage and only includes code required signage)	
Storage Shelving	
Toilet Compartments	
Toilet Partitions - Phenolic	for venue
Urinal Screens - Phenolic	for venue
Toilet, Bath & Laundry Accessories	for venue
Wall & Corner Guards	
Whirlpool Spas & Hot Tubs - Above Grade	1
Hydrotherapy	
Wire Mesh Partitions	1

#### 4. Audio Visual - \$1,265,600 budget allowance

<b>Sound System - Equipment &amp; Wiring</b>	<b>Budgeted Quantity</b>
Sound Reinforcement Console	1
Equipment Racks	1
Processing Equipment	1
Speaker, Public Areas	123
Speaker, BOH Areas	44
Speaker, Seating Bowl	61
Surge Suppressor	12
Input Sources - Main Console	1
Input Sources - Stand Alone Areas	4
Hearing Assistance System	1
Intercom System	1
Devices and Boxes	1
Microphones and Accessories	1
Stand Alone Systems	
Team Store	1
Club	1
Locker Room	2
Press Box	1
Cabling, Speaker	for venue
Cabling, Device	for venue
Cabling, Head End	1
<b>TV System - Equipment &amp; Wiring</b>	
Antenna Systems	1
Head End	1
TV outlet	105
Equipment Rack & Accessories	1
Cabling	for venue
Cabling - From Head-End to Dishes/Antennas	1
<b>Broadcast Media System - Equipment &amp; Wiring</b>	
Equipment	
JBE - ENG Box	4
JBT - Network Box	12
ENG Pedestal	4
Broadcast Truck Rack	1
Patch Panel - Video	8
Patch Panel - Audio	8
Patch Panel - Audio, Radio Interconnect	6
Triax jack Panel	6
Patch Cords	1
Equipment Rack	8
Audio / Video Distribution Amp	1

Serial Video Distribution Amp	1
Broadcast Media Cabling - In House	1
Broadcast Media Cabling - ENG (Local TV)	1
Broadcast Media Cabling - Event (Network)	1
<b>Clock System</b>	
Clock master	1
Clock Slave	12
Cabling, Speaker	for venue



A MULTIPURPOSE FACILITY  
IN **MADISON, ALABAMA**

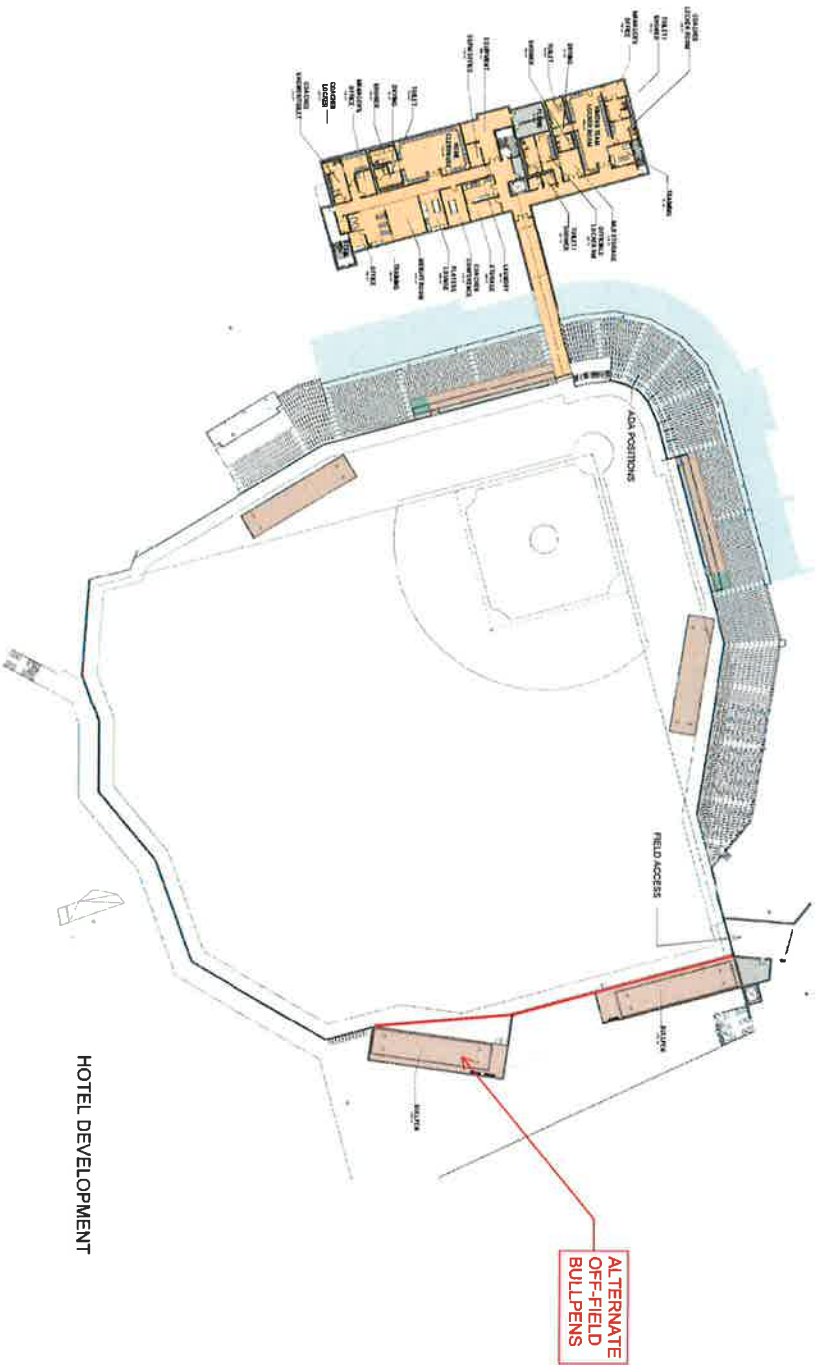
---

DESIGN UPDATE REVIEW

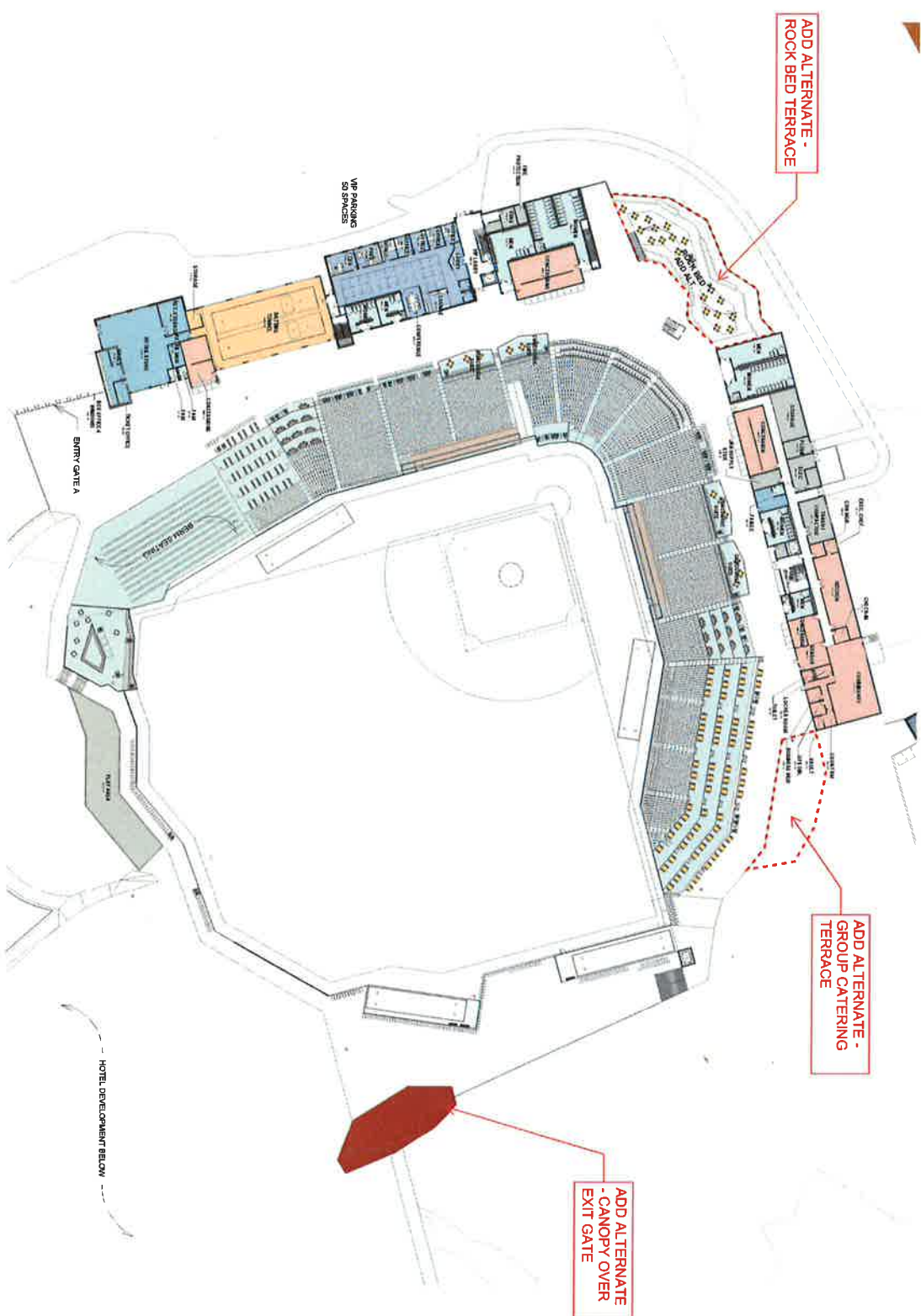
DATE ISSUED: FEBRUARY 12, 2018

**POPULOUS**

# CLUBHOUSE LEVEL

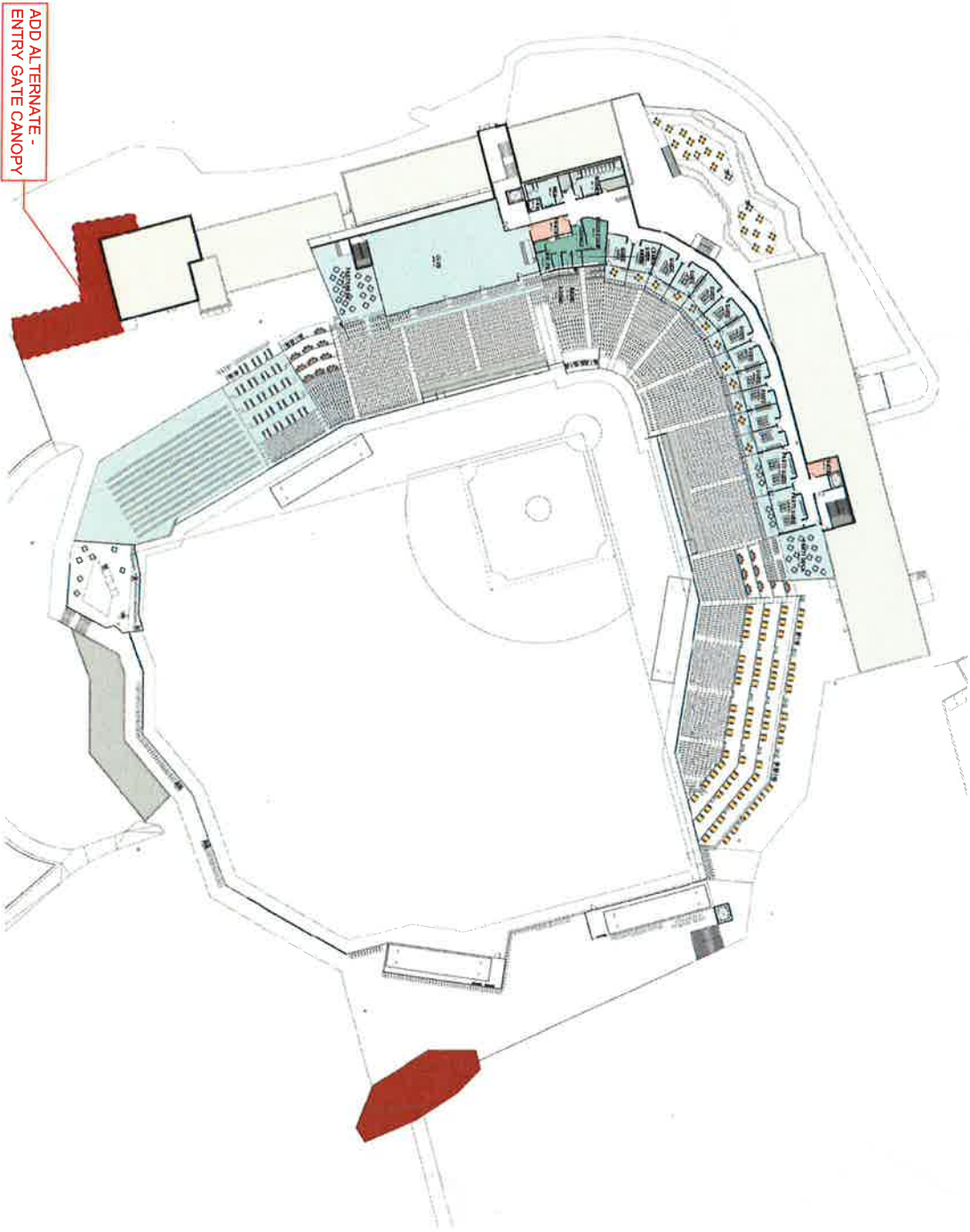


MAIN CONCOURSE LEVEL





SUITE/CLUB LEVEL



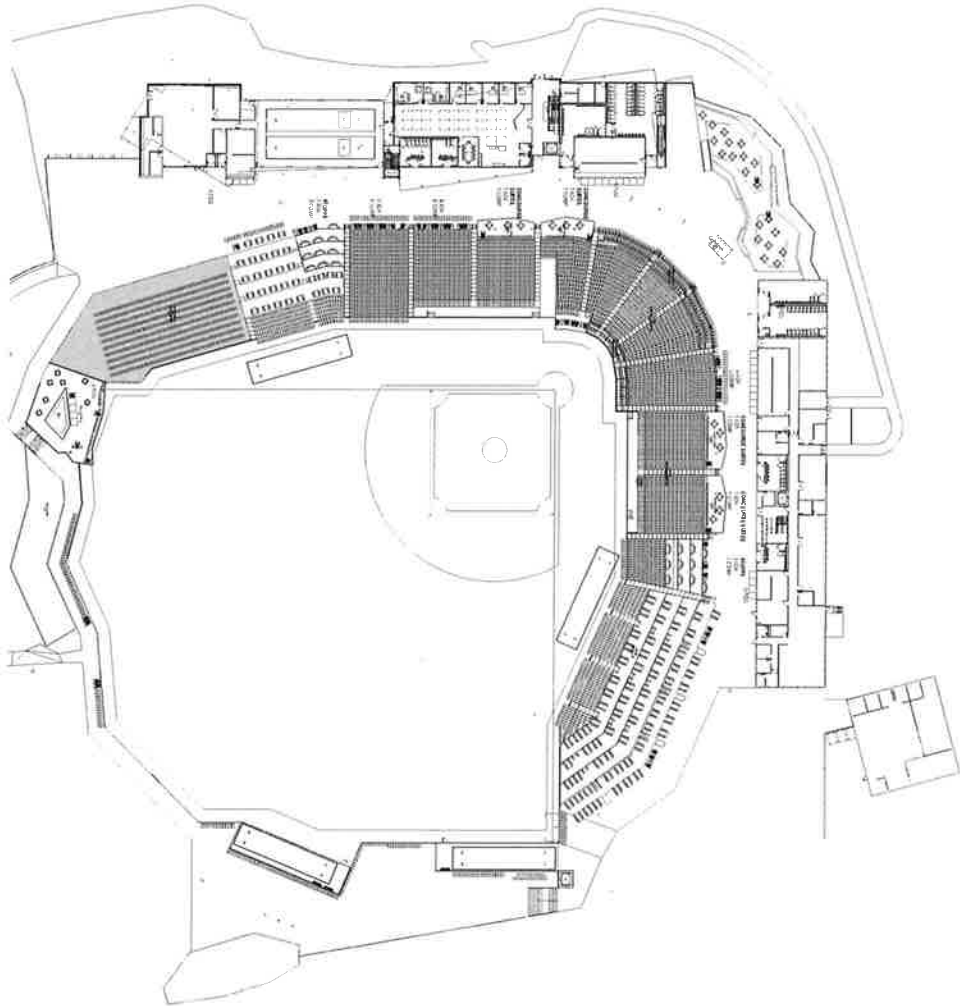
MADISON ALABAMA MPF

2018-02-12

*Madison*

POPULOUS

SEATING/PLAN MAIN CONCOURSE - SEAT COUNT



MADISON ALABAMA MPE

2018-02-12

SEAT COUNT			
SEATING ZONE	TREAD DEPTH	SEAT WIDTH (MIN)	SEAT COUNT

<b>01 - SEATING BOWL</b>			
BOWL SEATING - RESERVED	3'-0"	21"	4469
HOME PLATE BOX-SEATING			46
HOME PLATE DRINK RAIL	4'-6"	21"	124
SEATING BOWL, ADA			27
SEATING BOWL, ADA COMPANION			27
<b>TOTAL NON GROUP</b>			<b>4693</b>

<b>02 MAIN CONCOURSE GROUP SEATING</b>			
4 TOPPS	9'-0"		84
4 TOPPS ADA			6
4 TOPPS ADA COMPANION			6
BALLPARK BOXES/HIGH TOPS	9'-0" 12'-0"		236
BALLPARK BOXES ADA			5
BALLPARK BOXES COMPANION			5
CONCOURSE SUITES - ADA			92
CONCOURSE SUITES - ADA			4
PICNIC TERRACES	12'-0"		152
PICNIC TERRACES ADA			2
PICNIC TERRACES ADA COMPANION			2
RF BERM SEATING			500
RF OUTFIELD BERM SEATING - ADA			0
ROCK PORCH			51
ROCK PORCH-ADA			4
SNO SEATING			500
<b>TOTAL GROUP SEATING</b>			<b>1649</b>
<b>TOTAL LOWER BOWL</b>			<b>6342</b>

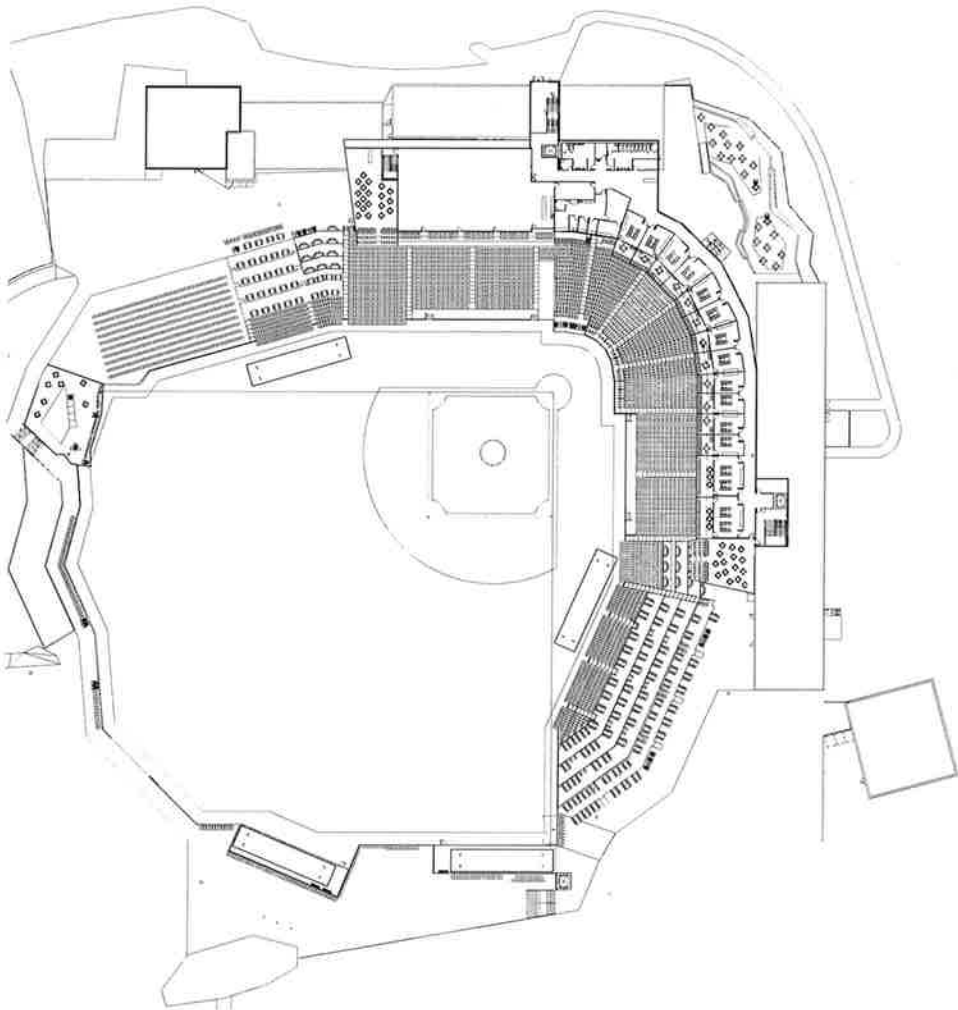
<b>03 SUITE LEVEL SEATING</b>			
(2) EXTENSION SEATING FOR PARTY SUITE	12'-0"	25 SF/PERSON	48
(10) EXTENSION SEATING FOR PARTY SUITES	12'-0"	25 SF/PERSON	144
(2) INTERIOR SEATING FOR PARTY SUITES		25 SF/PERSON	32
(10) INTERIOR SEATING FOR SUITES		25 SF/PERSON	96
PARTY DECK 1			59
PARTY DECK 2			75
SUITE LEVEL CLUB EXTERIOR FIXED	3'-0"	21"	104
SUITE LEVEL PARTY DECK-EXTERIOR FIXED			100
<b>TOTAL SUITE LEVEL</b>			<b>658</b>
<b>TOTAL BALDPAK</b>			<b>7000</b>



Madison

POPULOUS

SEATING/PLAN SUITE LEVEL - SEAT COUNT



Seat Count			
SEATING ZONE	TREAD DEPTH	SEAT WIDTH (MM)	SEAT COUNT

01 - SEATING BOWL			
BOWL SEATING - RESERVED	3'-0"	21"	4469
HOME PLATE BOX-SEATING	4'-6"	21"	46
HOME PLATE DRINK RAIL	-	-	124
SEATING BOWL ADA	-	-	27
SEATING BOWL ADA COMPANION	-	-	27
TOTAL NON GROUP	-	-	4693

02 MAIN CONCOURSE GROUP SEATING			
4 TOPS	9'-0"	-	84
4 TOPS ADA	-	-	6
4 TOPS ADA COMPANION	-	-	6
BALLPARK BOXES/HIGH TOPS	9'-0" 12'-0"	-	286
BALLPARK BOXES ADA	-	-	5
BALLPARK BOXES COMPANION	-	-	5
CONCOURSE SUITES	-	-	92
CONCOURSE SUITES - ADA	-	-	4
PICNIC TERRACES	12'-0"	-	132
PICNIC TERRACES ADA	-	-	2
PF TERRACES ADA COMPANION	-	-	2
PF TERRACES ADA	-	-	500
PF OUTFIELD BERM SEATING - ADA	-	-	0
ROCK PORCH	-	-	51
ROCK PORCH ADA	-	-	4
5NO SEATING	-	-	500
TOTAL GROUP SEATING	-	-	1649

TOTAL LOWER BOWL	-	-	6342
------------------	---	---	------

03 SUITE LEVEL SEATING			
(2) EXTERIOR SEATING FOR PARTY SUITE	12'-0"	25 SF/PERSON	48
(10) EXTERIOR SEATING FOR SUITES	12'-0"	25 SF/PERSON	144
(2) INTERIOR SEATING FOR PARTY SUITES	-	25 SF/PERSON	32
(10) INTERIOR SEATING FOR SUITES	-	25 SF/PERSON	96
PARTY DECK 1	-	-	59
PARTY DECK 2	-	-	75
SUITE LEVEL-CLUB EXTERIOR FIXED	3'-0"	21"	104
SUITE LEVEL-PARTY DECK-EXTERIOR FIXED	-	-	100
TOTAL SUITE LEVEL	-	-	658
TOTAL BALLPARK	-	-	7000



ENTRY AERIAL





ENTRY GATE AERIAL





ENTRY GATE



CONCOURSE



MADISON ALABAMA MPF

2018-02-12

*Madison*

POPULOUS



RIGHT FIELD AERIAL





1ST BASE BUILDING



MADISON ALABAMA MPF

2018-02-12

*Madison*

POPULOUS

1ST BASE ENTRY



MADISON ALABAMA MPF

2018-02-12

*Madison*

POPULOUS

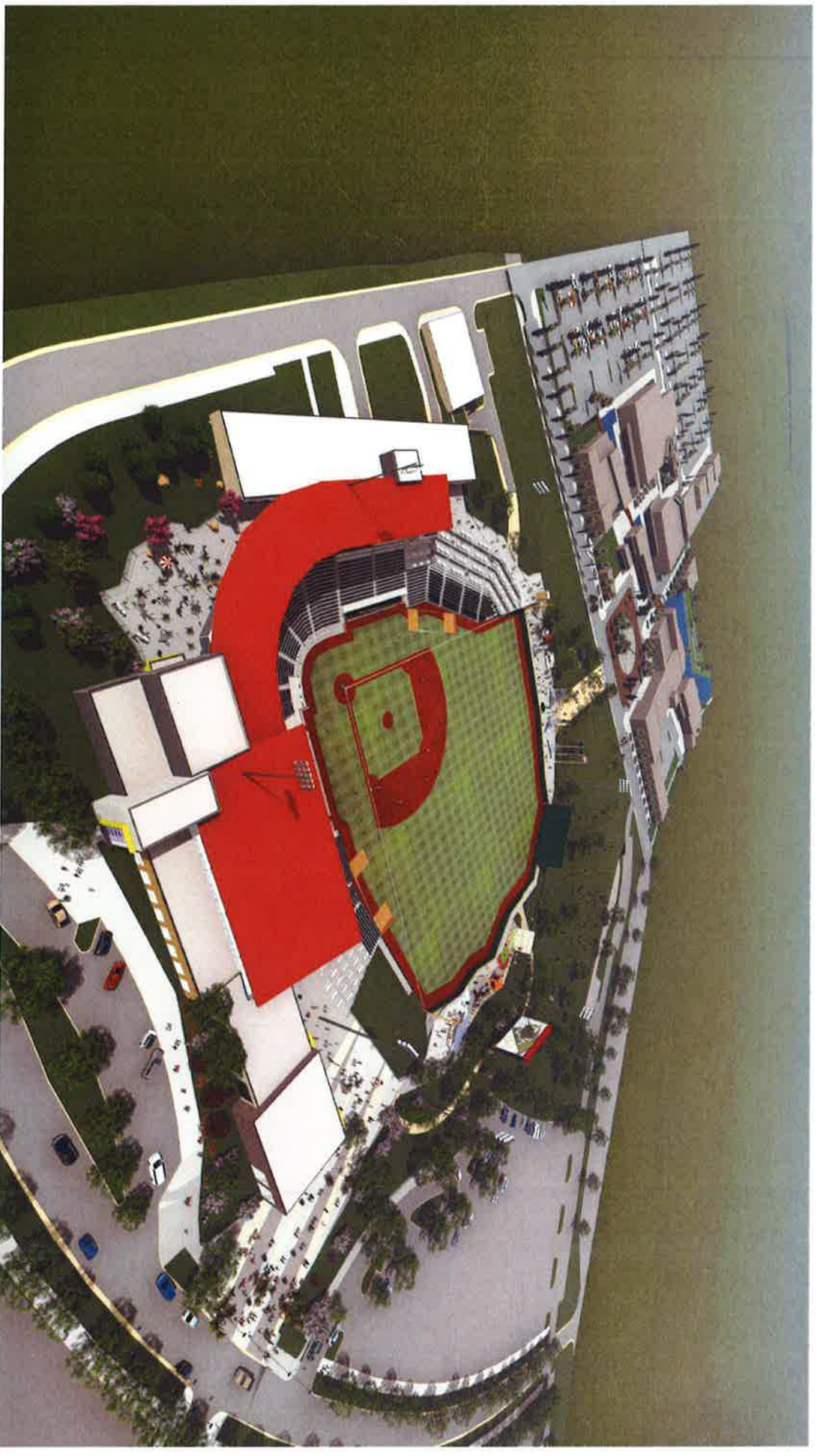


HOME PLATE TERRACE





## HOME PLATE OUTFIELD



PARTY DECK



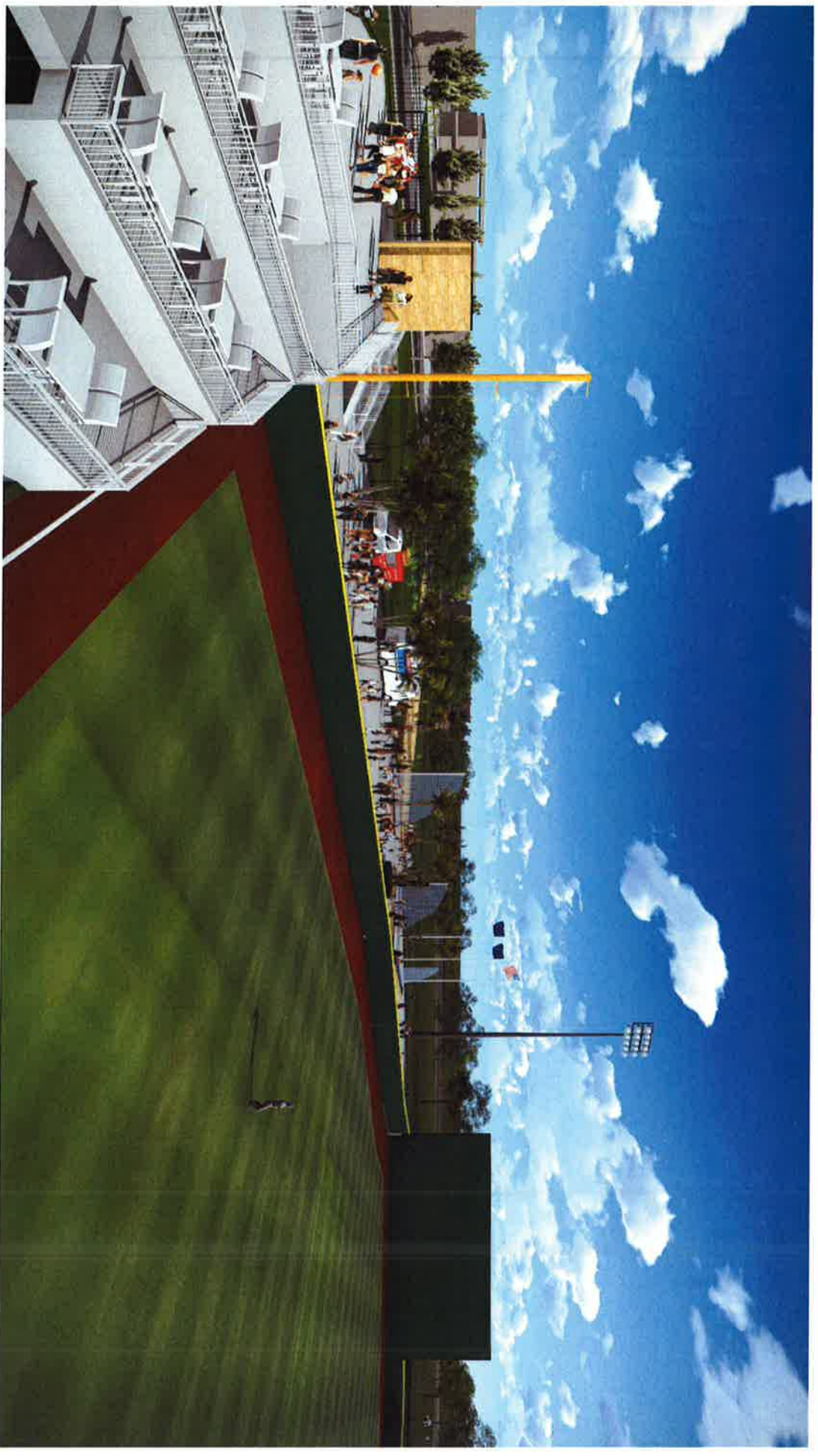
MADISON ALABAMA MPF

2018-02-12

*Madison*



## LEFT FIELD



MADISON ALABAMA MPF

2018-02-12

*M<sup>9</sup> Madison*

POPULOUS

LEFT FIELD AERIAL



MADISON ALABAMA MPF

2018-02-12

*Madison*

POPULOUS



OUTFIELD AERIAL



MADISON ALABAMA MPF

2018-02-12

*Madison*

POPULOUS



# POPULOUS®

*Madison*  
ALABAMA

**VENUE MANAGEMENT AGREEMENT**

**THE PROFESSIONAL BASEBALL AND MULTI-PURPOSE VENUE**

**MADISON, ALABAMA**

## **Table of Contents**

	<u>Page</u>
1. Retention of Manager; General Definitions .....	2
1.1. Retention of Manager.....	3
1.2. General Definitions .....	3
2. Manager Appointment/Manager's Responsibilities .....	5
2.1. Appointment/General Responsibilities .....	5
2.2. Manager's Personnel; Independent Contractor .....	5
2.3. Venue Manager .....	6
2.4. Compliance with Laws, Licenses, Etc .....	6
2.5. Security .....	6
2.6. Energy Management .....	6
2.7. Venue Operations.....	6
2.8. Service Contracts .....	7
2.9. City Events .....	7
2.10. Competitive Bidding .....	8
2.11. Repairs.....	8
2.12. Venue Use .....	8
2.13. Notices to City.....	8
3. Insurance and Claims.....	8
3.1. Manager's Insurance .....	8
3.2. Indemnification .....	9
3.3. Contractors' and Subcontractors' Insurance .....	10
3.4. Waiver of Subrogation .....	10
3.5. Service Contracts .....	11
3.6. Claims .....	11
4. Financial Reporting and Record Keeping.....	11
4.1. Financial Controls .....	11
4.2. Monthly Statements .....	11
4.3. Books and Records.....	11
5. City's Right to Audit .....	12
5.1. Right to Audit.....	12
6. City Proceeds.....	12
7. Cooperation.....	12

8.	Compensation .....	13
9.	Termination; Appointment of New Manager .....	13
9.1.	Termination .....	13
9.2.	Termination Without Notice .....	13
9.3.	Final Accounting .....	13
9.4.	Obligation to Vacate: Orderly Transition .....	13
9.5.	Appointment of New Manager.....	14
10.	Subsidiaries and Affiliates .....	14
11.	Requirements for Notice .....	14
12.	Certain Representations and Covenants .....	14
12.1.	Manager Representations .....	14
13.	Miscellaneous .....	15
13.1.	Word Meanings .....	15
13.2.	Assignment.....	15
13.3.	Binding Provisions .....	15
13.4.	Applicable Law .....	15
13.5.	Severability of Provisions .....	16
13.6.	Section Titles.....	16
13.7.	Further Assurances .....	16
13.8.	Entire Agreement .....	16
13.9.	Waiver.....	16
13.10.	Agreement in Counterparts .....	16
13.11.	Attorneys' Fees .....	17
13.12.	Time Periods .....	17
13.13.	Modification of Agreement.....	17
13.14.	Time of the Essence .....	17
13.15.	Construction of Agreement .....	17
13.16.	Consent and Approvals .....	17
13.17.	Use of City's Name Prohibited .....	17
13.18.	Confidentiality.....	17
13.19.	No Joint Venture .....	17

**VENUE MANAGEMENT AGREEMENT**

This Venue Management Agreement is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2018, by and between the **CITY OF MADISON, ALABAMA**, a municipal corporation (the "City") and **BALLCORPS, LLC**, an Arizona limited liability company authorized to do business in the State of Alabama (the "Manager").

**Background Recitals**

- A. City intends to construct and own the Venue (as defined below).
- B. Manager is a skilled, experienced and unique provider of the management, operation, maintenance and supervision of Professional Baseball Venues (as defined herein).
- C. City desires to avail itself of Manager's unique abilities and professional services and to engage Manager as an independent contractor on the terms and conditions set forth below, and Manager desires to accept such engagement.
- D. Manager, or its principals, will form an Alabama limited liability company to be owned and controlled by the individuals who own and control BallCorps, LLC and, once formed, such new entity shall assume the rights and obligations of Manager under this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, City and Manager agree as follows:

**Part I – Basic Data and Terms**

The following defined terms shall have the meaning set forth below:

"Commencement Date" means the earlier of a date agreed upon by the Parties or substantial completion of the Venue when City provides notice to BallCorps that it has issued a Certificate of Occupancy for the Venue.

"Manager's Notice Address" BallCorps, LLC  
Attn: Ralph Nelson

\_\_\_\_\_  
\_\_\_\_\_  
Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to

Timothy J. Haffner  
Faegre Baker Daniels LLP  
110 West Berry Street, Suite 2400  
Fort Wayne, IN 46802  
Phone: (260) 460-1616  
Fax: (260) 460-1700  
Email: [Timothy.Haffner@FaegreBD.com](mailto:Timothy.Haffner@FaegreBD.com)

“City’s Notice Address”

City of Madison  
Attn: Office of the Mayor  
100 Hughes Rd.  
Madison, AL 35758  
Telephone: 256-772-5603  
Email: [mayors.office@madisonal.gov](mailto:mayors.office@madisonal.gov)

with copies to:

City Attorney’s Office

Attn: Office of City Attorney  
100 Hughes Rd.  
Madison, AL 35758  
Telephone: 256-772-5603  
Email: [legal@madisonal.gov](mailto:legal@madisonal.gov),  
[megan.zingarelli@madisonal.gov](mailto:megan.zingarelli@madisonal.gov)

and

Richard A. Nussbaum, II  
Sopko, Nussbaum, Inabnit & Kaczmarek  
210 South Michigan, Suite 500  
South Bend, IN 46601  
Phone: (574) 234-3000 x364  
Fax: (574) 234-4220  
Email: [dickn@sni-law.com](mailto:dickn@sni-law.com)

“Venue” means that certain Professional Baseball Venue to be located at the Site defined and described in the Venue License, Lease and Management Agreement, together with all personal property (excluding BallCorps Office Property) attached thereto, located thereon or used in connection therewith.

**Part II - Management Terms**

1. Retention of Manager; General Definitions.

1.1. Retention of Manager. City hereby retains Manager to perform the services described below in accordance with the terms and conditions of this Agreement, utilizing trained, experienced personnel and employing professional venue management practices and techniques. Manager accepts the relationship of trust and confidence established between it and City by this Agreement and covenants to use its best skill and prudent business judgment in furthering the interests of City. Manager will act in a fiduciary capacity for the benefit of City with respect to the proper protection of and accounting for the Venue. Manager's duties and responsibilities will commence on the Commencement Date and shall continue until the expiration or earlier termination of this Agreement in accordance with Article 9.

1.2. General Definitions. As used in this Agreement, any capitalized term not defined herein shall have the same meaning as is set forth in the Venue License Agreement (as defined herein). The following terms shall have the following respective meanings:

"Affiliate of Manager" shall mean any person or entity which (i) is a director, officer, partner, member or trustee of Manager, or in which Manager is a director, officer, partner, member or trustee, (ii) has any direct or indirect legal or beneficial interest in Manager, or in which Manager has any direct or indirect legal or beneficial interest, or (iii) directly or indirectly controls, is controlled by or is under common control with Manager.

"Agreement" shall mean this Venue Management Agreement, including all Schedules and Exhibits hereto, all as amended from time to time in accordance with the terms hereof.

"Annual Maintenance Budget" shall have the meaning set forth in **Section 2.7(b)**.

"BallCorps" shall mean BallCorps, LLC, an Arizona limited liability company, as well as entities it has created and the successors and assigns of either.

"BallCorps Office Property" shall mean the desks, chairs, telephone, computers, tables, and other personal property supplied and used by BallCorps at the Venue.

"Board of Advisors" shall mean the five (5) member board responsible for making recommendations regarding the management and operation of the Venue as described in Article XXIII of the Venue License Agreement. The Board of Advisors will be comprised of one (1) appointee from BallCorps and four (4) appointees from the following organizations, their successors and assignees:

- (a) The City's Director of Development Services, who will be appointed to serve a term coinciding with his/her service;
- (b) One representative from either the board or staff of the Madison Chamber of Commerce;
- (c) The City's Director of Finance or his/her proxy; and
- (d) One at-large member of the community appointed by the Mayor of the City.

All recommendations of the Board of Advisors for the expenditure of public funds shall not be binding upon the City and shall be subject to review and approval of the City Council. The Board of Advisors shall be given substantial deference with regard to all matters involving its input.

“Books and Records” shall have the meaning set forth in **Section 4.3**.

“Business Day” shall mean every day that is not a Saturday, Sunday or day on which banks in Alabama are required by law or executive action to be closed for the transaction of normal banking business.

“City Events” shall have the meaning set forth in the Venue License Agreement.

“City Related Parties” shall mean City, members of the Board of Advisors appointed by City, and employees, advisors and agents of City.

“Damages” shall mean all claims, actions, suits, proceedings, judgments, damages, fines, penalties, losses and expenses, including reasonable attorneys’ fees, consultants’ and expert witness fees and court costs, including any such costs incurred in any bankruptcy or other legal or administrative proceeding.

“Insurance Requirements” shall mean all requirements of any insurance policy covering the Venue or the use thereof, all requirements of the issuer of any such policy, and all requirements, orders, rules or regulations of the National Board of Fire Underwriters (or similar agencies) applicable to the Venue.

“Legal Requirements” shall mean all federal, state, municipal and professional baseball laws, rules or regulations, including, but not limited to, those established from time to time by Minor League Baseball and the Southern League of Professional Baseball Teams, Inc., applicable to the Venue or the use or operation thereof.

“Licenses” shall mean all permits, licenses, approvals, consents and other entitlements required for the operation, occupancy and leasing of the Venue.

“Minor League Baseball” shall mean the National Association of Professional Baseball Leagues, Inc., with its principal offices located in St. Petersburg, Florida.

“Monthly Statement” shall have the meaning set forth in **Section 4.2**.

“Professional Baseball Management Standards” shall have the meaning set forth in **Section 2.1**.

“Professional Baseball Venues” shall mean certain venues developed and constructed in accordance with standards set forth by Minor League Baseball.

“Service Contracts” shall have the meaning set forth in **Section 2.8**.



“Venue Area” shall have the meaning set forth in the Venue License Agreement.

“Venue License Agreement” shall mean that certain Venue License, Lease, and Management Agreement between the City and BallCorps of even date herewith.

“Venue Manager” shall have the meaning set forth in **Section 2.3**.

2. Manager Appointment/Manager’s Responsibilities.

2.1. Appointment/General Responsibilities. Subject to the provisions of this Agreement, Manager shall manage, operate and maintain the Venue and Venue Area in a manner consistent with the standards of modern Class AA Affiliated Professional Baseball Venues and in accordance with standards and practices of prudent, qualified and professional managers that manage and maintain properties similar to the Venue (collectively, the foregoing standard shall be referred to as the “Professional Baseball Management Standards”). Manager shall perform its duties hereunder: (a) in accordance with the terms of this Agreement; and (b) in compliance with all applicable laws, rules and regulations, including the Legal Requirements.

2.2. Manager’s Personnel; Independent Contractor.

(a) Manager has in its employ at all times a sufficient number of capable employees to enable it to properly, adequately, safely and economically manage, operate, maintain and account for the Venue and otherwise perform its obligations hereunder in accordance with the terms of this Agreement.

(b) All matters relating to the employment, supervision, compensation, promotion and discharge of such employees are the responsibility of Manager (with respect to which Manager shall exercise reasonable care); Manager is in all respects the employer of such employees. Manager shall negotiate with any union lawfully entitled to represent such employees and may execute, in its own name and not as agent for City, collective bargaining agreements or labor contracts resulting therefrom. Manager represents that it is and will continue to be an equal opportunity employer and that it shall advertise as such. This Agreement is not one of agency by Manager for City, but one with Manager engaged independently in the business of managing properties as an independent contractor. All employment arrangements are therefore solely Manager’s responsibility and City shall not have any liability with respect thereto. Except as expressly set forth herein, nothing contained herein shall be deemed to permit Manager to charge City or to use the income of the Venue to pay for the services of Manager’s employees.

(c) Manager shall fully comply with all applicable laws, rules, regulations and orders relating to worker’s compensation, social security, unemployment insurance, wages, hours, working conditions and other matters pertaining to Manager’s personnel. Manager shall indemnify, defend and hold harmless the City and all City Related Entities from and against all Damages arising out of or relating to Manager’s failure to comply

with this **Section 2.2**. Manager's indemnification obligations under this **Section 2.2(c)** shall survive the termination or expiration of this Agreement.

(d) Manager shall be solely responsible for its personnel both during the term of this Agreement and in the event of the termination of this Agreement.

2.3. Venue Manager. Manager shall promptly notify City of any change in the individual appointed from time to time by Manager to be primarily responsible for the management of the Venue (the "Venue Manager").

2.4. Compliance with Laws, Licenses, Etc.

(a) Except to the extent not in Manager's control, or as expressly assumed by City hereunder or under the Venue License Agreement, Manager will be responsible for compliance with the Legal Requirements and Insurance Requirements.

(b) Manager and/or its affiliates shall, at Manager's expense, obtain and maintain all Licenses.

(c) Manager will be responsible, except as provided in this Agreement or the Venue License Agreement, at Manager's expense, for compliance with all contracts and agreements relating to the use, management or operation of the Venue.

(d) Manager shall, at Manager's expense, maintain its legal existence and good standing and obtain and maintain in effect all licenses and permits necessary or desirable to carry out its duties hereunder.

2.5. Security. The City, at its expense, shall determine and be responsible for all reasonable security outside the Venue Area for all Venue Events and inside the Venue Area for all City Events. BallCorps shall determine and be responsible, at its expense, for security inside the Venue Area for all BallCorps Events. It is anticipated that the Venue concourse and City Park located adjacent to the Venue will generally be open to the public on non-event days and, during such times, the City shall be responsible for security inside the Venue Area.

2.6. Energy Management. Manager shall exercise diligent care to provide appropriate energy management and shall utilize commercially prudent utility conservation techniques.

2.7. Venue Operations.

(a) Manager agrees to manage, operate and maintain the Venue throughout the term hereof in accordance with Professional Baseball Management Standards. Manager shall, at its expense, be responsible for the costs of all BallCorps Maintenance Obligations as set forth on Exhibit IV(C)(1) to the Venue License Agreement. The City shall, at its expense, be responsible for the cost of all City Maintenance Obligations set forth on Exhibit IV(C)(2) to the Venue License Agreement.

(b) On or before July 20<sup>th</sup> of each year during the term of this Agreement, the Board of Advisors shall prepare and submit to City for City's approval a detailed Annual Maintenance Budget (the "Annual Maintenance Budget"). Such Annual Maintenance Budget shall identify all maintenance to the Venue that Manager anticipates to be required in the period commencing October 1 and ending on September 30 of the following year. The Annual Maintenance Budget shall also provide a detailed summary of all maintenance, repairs and replacements that are completed at the Venue in the then current year (concluding September 30), including all maintenance or repairs which are the responsibility of the Manager.

(c) The Annual Maintenance Budget shall be in a form and with such content and detail as may be reasonably requested by the City.

(d) The Board of Advisors shall promptly review and, as appropriate, approve the Annual Maintenance Plan. As provided in **Section 2.10** below, Manager shall comply with all required bidding procedures and provide the City with such documentation of the same as may be reasonably requested from time to time by the City.

(e) The Manager shall submit requests for payment from the City, or requests for reimbursement when Manager has made payment for a City Maintenance Obligation directly, in such form and content with supporting documents as may from time to time be reasonably required by the City.

(f) Unless stated otherwise herein, actions of the City as contemplated under this **Section 2.7** shall be conducted under the direction of the Board of Advisors.

## **2.8. Service Contracts.**

(a) Manager may, as necessary and/or appropriate to fulfill its obligations hereunder, negotiate and enter into bona fide contracts with parties for janitorial services, landscape maintenance and such other maintenance services for the Venue (the "Service Contracts") as Manager shall reasonably determine to be advisable. Any Service Contract which is a City Maintenance Obligation or otherwise the responsibility of the City must be approved in writing by the City if such expense is not included in the Annual Maintenance Budget or is not cancelable without cost or penalty upon thirty (30) days' notice by the City. Manager's Service Contracts: (i) shall be in the name of Manager and (ii) shall be terminable upon no more than thirty (30) days' notice without penalty or premium. To the extent required in **Section 3.3**, each Service Contract shall provide that the service provider thereunder must obtain the insurance described in **Section 3.3** hereof and must provide satisfactory evidence of such insurance to Manager.

**2.9. City Events.** Manager will use diligent efforts to collect all charges or fees which may become due at any time from any City Event and will use diligent efforts to ensure a user's compliance with the rules and regulations applicable to the Venue.

2.10. Competitive Bidding. When required by state or local law, all contracts for repairs, capital improvements, goods and services for which the City is obligated to pay will be awarded on the basis of competitive bidding conducted in accordance with applicable Legal Requirements.

2.11. Repairs. Manager shall make, or cause to be made, all repairs to the Venue as required. Manager shall not make expenditures for capital improvements for which the City is obligated to make payment or which are City Maintenance Obligations unless the same are specifically set forth in the Annual Maintenance Budget or are otherwise approved in writing by City. If it is necessary to prevent imminent damage to the Venue or the health or safety of any person on or about the Venue, or if City or Manager is threatened with immediate criminal or civil liability, Manager shall obtain an emergency declaration from the City's Finance Department before the contractor begins work. Manager shall submit the resulting agreement and a record of all expenditures to the City for City Council approval at the earliest possible date.

2.12. Venue Use. Manager and City shall work together in good faith to cause the Venue to be utilized for the benefit of the City and the surrounding community.

2.13. Notices to City. Manager shall promptly notify City in writing if Manager becomes aware of any of the following:

- (a) any default or alleged default by Manager;
- (b) any litigation or potential litigation affecting the Venue or City, or any litigation affecting Manager that could reasonably be expected to have a material and adverse effect on City;
- (c) any casualty, loss, injury, claim or other event relating to the Venue that might result in a claim under any applicable insurance policies;
- (d) any violation or alleged violation of any Legal Requirements or Insurance Requirements;
- (e) any involuntary lien filed against the Venue; and
- (f) any material increases or decreases in costs, expenses or income not reflected in the Annual Maintenance Budget.

3. Insurance and Claims.

3.1. Manager's Insurance. Manager will maintain (as an operating expense of the Venue with respect to onsite employees only) Workers' Compensation and similar insurance as required by law. Manager will maintain the following levels and type insurance coverage to the extent commercially available (not chargeable to the City):

- (a) Employer's Liability - \$500,000 each accident; \$500,000 disease - policy limit; \$500,000 disease - each employee;

(b) Automobile Liability - As to any vehicle owned, non-owned or hired by Manager, \$1,000,000 covering losses due to the insurer's liability for bodily injury or property damage;

(c) Uninsured/Underinsured Motorists' Coverage for any owned car - \$1,000,000;

(d) Excess Liability Coverage – \$5,000,000; and

(e) Commercial General Liability - \$2,000,000 per occurrence and in the aggregate.

The minimum A.M. Best's rating of each insurer is A-VII. Manager will furnish City with certificates of insurance, simultaneously with the execution of this Agreement and whenever coverage is renewed or replaced, evidencing the aforesaid coverages, which will include provisions to the effect that City will be given at least 30 days' prior written notice of cancellation or non-renewal of or any material change in any of the aforesaid policies. City will be named as an additional insured with respect to all insurance policies required under subsections (b) and (d) above and as loss payee as respects subsection (c) above. All liability policies shall contain endorsements that (i) delete any employee exclusion on personal injury coverage, (ii) include employees as additional insureds and (iii) contain cross-liability, waiver of subrogation and such other provisions as City may reasonably require. Such insurance shall also include broad form contractual liability insurance insuring all of Manager's indemnification obligations under this Agreement.

### 3.2. Indemnification.

(a) Manager shall indemnify, hold harmless, protect and defend (with counsel approved by City) the City and City Related Parties from and against all Damages in any manner related to, arising out of or resulting from:

(i) any failure of Manager or Manager's agents, servants or employees to perform their obligations under this Agreement;

(ii) any acts of Manager or Manager's agents, servants or employees beyond the scope of its authority under this Agreement; or

(iii) any gross negligence, willful misconduct or illegal acts or omissions of Manager or Manager's agents, servants or employees.

(b) To the extent allowed by law and subject to approval by the City's municipal insurance provider, subject to any tort claim limitations, and up to the extent of any applicable insurance proceeds, the City shall protect, defend, indemnify and hold harmless Manager from and against any and all Damages arising out of the performance by City of its obligations and duties which are within the line and scope of the duties of its officers, directors, elected officials, duly authorized agents and employees performed pursuant to this Agreement. However, City does not hereby agree and shall not be

obligated to so indemnify Manager from any Damages arising out of any act or omission of Manager or any of its agents, officers, employees or representatives, which act or omission constitutes gross negligence, willful misconduct, is in breach of this Agreement or is outside the scope of Manager's authority as provided herein, or any Damages for which Manager is covered by insurance or for which Manager would be covered by insurance if it maintained the insurance required by this Agreement.

Notwithstanding any other provisions of this Agreement to the contrary, Manager's obligations under this **Section 3.2** shall survive the expiration, termination or cancellation of this Agreement.

3.3. Contractors' and Subcontractors' Insurance. To the extent commercially available and for contracts in excess of \$100,000, Manager will require that all parties performing work on or with respect to the Venue, including, contractors, subcontractors and service vendors, maintain insurance coverage at such parties' expense, in the following minimum amounts:

- (a) Workers' Compensation - Statutory amount;
- (b) Automobile Liability - \$1,000,000 covering losses due to the insurer's liability for bodily injury or property damage;
- (c) Medical Expenses - \$5,000 per person per accident;
- (d) Commercial General Liability: Bodily injury and property damage - \$1,000,000 combined single limit with Contractual Liability coverage; and
- (e) Excess Liability Coverage - \$2,000,000 or such greater amount as is needed for the specific job.

The minimum A.M. Best's rating of each insurer is A-VII. Manager must obtain City's written permission to waive any of the above requirements. Higher amounts may be required by City if the work to be performed is deemed by City to be hazardous. Manager will obtain and keep on file a certificate of insurance which shows that each such party is so insured, and it shall provide copies to City upon its reasonable request. City will be named as an additional insured with respect to Contractors' and Subcontractors' Auto Liability, Commercial General Liability and Excess Liability policies. Manager must obtain indemnification and hold harmless provisions in favor of City and Manager. All coverages listed above shall apply on a primary and non-contributory basis.

3.4. Waiver of Subrogation. Insofar as, and to the extent that, the following provision may be effective without invalidating or making it impossible to obtain insurance, Manager and City agree that, with respect to any hazard, liability, casualty or other loss or claim which is covered by insurance then being carried by either City or Manager: (a) the party carrying such insurance and suffering such loss releases the other party of and from any and all claims with respect to such loss to the extent of the insurance proceeds paid with respect thereto and specifically excepting from such release any deductible required to be paid therewith; and

(b) their respective insurance companies shall have no right of subrogation against the other or their respective agents, contractors, employees, licensees or invitees on account thereof.

3.5. Service Contracts. Manager shall require to be included in all Service Contracts provisions requiring the service provider to indemnify, defend (with counsel approved by City), protect and hold harmless the City Related Entities from all Damages in any manner arising from or related to the acts or omissions of such service provider or its employees, agents or contractors.

3.6. Claims. Manager shall promptly investigate and make a full and timely report to City of any casualty, accident, injury or other similar matter affecting the Venue. Manager shall also file such reports in a timely manner to the applicable insurance carriers in accordance with the terms and conditions of the relevant policies. Manager shall cooperate with and assist City and the applicable insurance carrier in connection with the investigation and processing of insurance claims affecting the Venue.

4. Financial Reporting and Record Keeping.

4.1. Financial Controls. Manager will ensure such control over accounting and financial transactions as is reasonably required to protect City's assets from theft, gross negligence or fraudulent activity on the part of Manager's employees or other agents. Uninsured losses arising from theft, gross negligence or fraud of Manager, its employees or agents are to be borne by Manager and not as an operating expense of the Venue.

4.2. Monthly Statements. On the 15th day of each month throughout the term hereof Manager shall provide City with a monthly statement (the "Monthly Statement") setting forth:

- (a) A current user summary and detailed use activity report;
- (b) Invoices for reimbursement from the City or the Capital Maintenance Fund (as defined in the Venue License Agreement);
- (c) Expenses and receipts for all City Events;
- (d) All expenditures by Manager on venue maintenance as set forth in the Venue License Agreement and in this Agreement;
- (e) Such other related information as the City may reasonably request; and
- (f) A detailed accounting of the Announced Attendance (as defined in the Venue License Agreement) and all Performance License Fees to be paid by BallCorps to the City under the Venue License Agreement.

4.3. Books and Records. Manager shall maintain at the Venue separate and accurate books, records and files (collectively, the "Books and Records") in a good and orderly fashion. The Books and Records shall be the property of City, shall be kept at the Venue or at Manager's Notice Address (or such other location as City may approve) and shall include the following:

(a) Executed use agreements for City Events, venue use or sublicense agreements, original insurance certificates and correspondence, all of which may be maintained by Manager in electronic form;

(b) Maintenance and repair files;

(c) Accounting books and records and supporting documentation for Performance License Fees and reimbursement and expenses for City Events;

(d) Operation files, including HVAC, concessions, and equipment maintenance schedules, warranties, and operation manuals;

(e) Service contracts, including cleaning, maintenance, landscaping, snow removal, trash removal, etc.;

(f) Permits and licenses;

(g) Copies of insurance policies or certificates; and

(h) Such other information relating to the Venue as City reasonably requests from time to time.

5. City's Right to Audit.

5.1. Right to Audit. Manager shall annually provide its audit to City for all of its managerial activities at the Venue each year. Subject to a confidentiality agreement to be entered into between City and Manager, City will, at all times and with a minimum of five (5) days' advance notice, have the right to conduct audits and examinations of the Books and Records. Such audit will be for the purpose of confirming compliance with Manager's obligations hereunder and under the License Agreement. Such right may be exercised through any agent or employee of City, including any certified public accountants designated by City. Should City discover either weaknesses in internal control or errors in record keeping, Manager will correct such discrepancies promptly upon City's request and will inform City, in writing, of the action taken to correct such audit discrepancies. All audits conducted by City will be at the sole expense of City, unless such audit reveals a discrepancy detrimental to City in excess of ten percent (10%) of such account or transaction and over \$10,000, in which case Manager shall bear the cost of such audit.

6. City Proceeds. Manager will transfer to the City on a monthly basis all funds collected from the operation of the Venue which are the property of City as set forth in the Venue License Agreement as soon as practical.

7. Cooperation. Should any claims, demands, suits or other legal proceedings be made or instituted by any person against or affecting City which arise out of any of the matters relating to this Agreement or otherwise, Manager shall notify City immediately upon becoming aware of same and Manager shall give City all pertinent information possessed by Manager and reasonable assistance in the defense or other disposition thereof.



8. Compensation. As compensation for its service hereunder, Manager shall be entitled to receive and retain Venue Revenue as provided in the Venue License Agreement.

9. Termination; Appointment of New Manager.

9.1. Termination. The term of this Agreement will be for a period of five (5) years and will be renewed automatically for five (5) successive periods of five (5) years each, unless (i) Manager is in default hereunder, (ii) the Venue License Agreement is no longer in force, or (iii) BallCorps is in default under the Venue License Agreement, which default has not been cured within thirty (30) days after written notice of the same.

9.2. Termination Without Notice. Without limitation of City's rights under **Section 9.1** hereof, upon the occurrence of any one or more of the following events, at the sole election of City and without further notice to Manager, this Agreement will be deemed terminated: (i) dissolution or termination of the legal existence of Manager, whether by merger, consolidation or otherwise, unless such termination or dissolution is pursuant to a reorganization by Manager in which Manager provides the City prior notice thereof; (ii) termination or suspension of BallCorps' membership in Minor League Baseball, the Southern League or an acceptable equivalent by the Baseball Authorities (as defined in the Venue License Agreement); (iii) cessation on Manager's part to do business; or (iv) the filing of proceedings by or against Manager or any general partner or parent corporation of Manager for bankruptcy, insolvency, reorganization or other relief of debtors, or any assignment for the benefit of the creditors of Manager.

9.3. Final Accounting. Upon termination of this Agreement, Manager will deliver to City the following with respect to the Venue:

(a) A final accounting, reflecting the balance of income and expenses of the Venue as of the date of termination or withdrawal, to be delivered within sixty (60) days after such termination;

(b) Any balance of any monies of City, prepaid rent, or tenant security deposits, or both, held by Manager with respect to the Venue (less amounts necessary to reimburse or pay Manager, to pay outstanding invoices or for work completed but not yet invoiced), to be delivered immediately upon such termination; and

(c) The Books and Records and all other records, contracts, leases, tenant correspondence, files, receipts for deposits, unpaid bills and other papers, documents or computer disks or information which pertain in any way to the Venue, to be delivered immediately upon such termination.

9.4. Obligation to Vacate; Orderly Transition. Upon termination of this Agreement, Manager promptly will vacate any office space provided by City for the location of Manager's personnel, with reasonable wear and tear excepted. Upon termination of this Agreement, Manager will cooperate in all respects in order to effect an orderly transition of the management functions to a new manager. Manager's obligations under **Section 9.3** and this **Section 9.4** will

survive termination of this Agreement. Following termination of this Agreement, neither party shall have any rights or duties hereunder, except that there shall survive such termination: (a) all provisions hereof which expressly declare their survival; (b) those provisions hereof which are necessary to the proper interpretation and enforcement of the provisions described in clause (a), to the extent of such necessity; and (c) rights and remedies respecting pre-termination breaches hereof. Termination of this Agreement between City and Manager shall not constitute grounds for a termination of BallCorps' rights under the Venue License Agreement.

9.5. Appointment of New Manager. In the event of the termination of Manager by City in accordance with the terms hereof, City shall be entitled to appoint a new Venue Manager to perform the services of Manager, contemplated hereunder, or to perform such services itself. In the event the City selects a third-party manager, such appointment shall be subject to the approval of BallCorps, LLC, which consent shall not be unreasonably withheld, conditioned or delayed. Whether the City or a third-party manager appointed by the City, the City shall, with respect to all BallCorps Maintenance Obligations (including the right of BallCorps to approve any budget, as such approval shall not be unreasonably withheld, conditioned or delayed), provide BallCorps with an Annual Maintenance Budget and future reporting procedure similar to that to be followed by Manager with respect to City Maintenance Obligations. The City will also use commercially reasonable efforts to cost effectively and efficiently manage the BallCorps Maintenance Obligations (which would remain the financial responsibility of BallCorps).

10. Subsidiaries and Affiliates. Any contract or lease of any kind whatsoever between Manager and any Affiliate of Manager with respect to the Venue will be subject to the prior written approval of City, which approval shall not be unreasonably withheld.

11. Requirements for Notice.

(a) All notices given hereunder shall be in writing and shall be delivered by hand, by nationally recognized overnight express delivery service (all charges prepaid) for next business day delivery, addressed as appropriate to City or Manager at City's Notice Address or Manager's Notice Address, respectively.

(b) Any notice or other communication sent or provided above shall be deemed given (i) on the date of delivery, if by hand or (ii) on the date mailed, if sent by overnight express delivery service. Such notice shall be deemed received on the date of receipt by the addressee or the date receipt would have been effectuated if delivery were not refused. Each party hereto may designate a new Notice Address by written notice to the other parties in accordance with this **Section 11.1**. The inability to deliver a notice because of a change of address of which proper notice was not given shall be deemed a refusal of such notice.

12. Certain Representations and Covenants.

12.1. Manager Representations. Manager hereby represents and warrants to City as follows:

(a) Manager has or will acquire all licenses, permits, authorizations and approvals necessary to allow it to enter into this Agreement and perform its duties hereunder;

(b) Neither Manager nor, to the best of Manager's knowledge after reasonable inquiry, any of its employees, has been convicted of robbery, extortion, embezzlement, fraud, grand larceny, burglary, arson, a felony drug offense, murder, rape, kidnapping, perjury, assault with intent to kill, a violation of the Employee Retirement Income Security Act of 1974 or any other felonies.

13. Miscellaneous.

13.1. Word Meanings. Words such as "herein," "hereinafter," "hereof" and "hereunder" when used in reference to this Agreement, refer to this Agreement as a whole and not merely to a subdivision in which such words appear, unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. The word "including" shall not be restrictive and shall be interpreted as if followed by the words "without limitation."

13.2. Assignment. Except as contemplated by the Background Recitals on page 1 hereof, without City's prior consent, which approval shall not be unreasonably withheld, Manager shall not transfer, assign, subcontract or delegate its duties under this Agreement, and any attempted transfer, assignment, subcontract or delegation without such consent shall be of no force or effect. The services of Manager hereunder are personal in nature.

13.3. Binding Provisions. Subject to **Section 13.2**, the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the heirs, legal representatives, successors and assigns of the respective parties hereto.

13.4. Applicable Law. The interpretation, construction and enforceability of this Agreement shall be governed in all respects by the laws of the State of Alabama without regard to any choice of law principles. Any legal proceedings arising out of any of the transactions or obligations contemplated by this Agreement may be brought in the state courts of Alabama situated in Madison County, Alabama, or the United States District Court for the Northern District of Alabama. The parties hereto irrevocably and unconditionally: (a) submit to the jurisdiction of such courts and agree to take any and all future action necessary to submit to such jurisdiction; (b) waive any objection which they may now or hereafter have to the venue of any suit, action or proceeding brought in such courts; and (c) waive any claim that any such suit, action or proceeding brought in such court has been brought in an inconvenient forum.

(a) Alabama Immigration Law. By signing this Agreement, the contracting parties affirm, for the duration of the Agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom, to the extent allowed by Federal law.

13.5. Severability of Provisions. The parties hereto intend and believe that each provision in this Agreement comports with all applicable local, state and federal laws and judicial decisions. If any provision in this Agreement is, however, found by a court of law to be in violation of any applicable local, state, or federal law, statute, ordinance, administrative or judicial decision, or public policy, or if in any other respect such a court declares any such provision to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that, consistent with and with a view towards preserving the economic and legal arrangements among the parties hereto as expressed in this Agreement, such provision shall be given force and effect to the fullest possible extent, and that the remainder of this Agreement shall be construed as if such illegal, invalid, unlawful, void, or unenforceable provision were not contained herein, and that the rights, obligations, and interests of the parties under the remainder of this Agreement shall continue in full force and effect. Each provision of this Agreement shall be considered separable and if for any reason any provision or provisions herein are determined to be invalid, unenforceable or illegal under any existing or future law, such invalidity, unenforceability or illegality shall not impair the operation of or affect those portions of this Agreement which are valid, enforceable and legal.

13.6. Section Titles. Section titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

13.7. Further Assurances. Manager and City shall execute and deliver such further instruments and do such further acts and things as may reasonably be required to carry out the intent and purposes of this Agreement.

13.8. Entire Agreement. This Agreement, together with the Venue License Agreement, the Schedules and Exhibits attached hereto, constitute the entire agreement between the parties hereto with respect to the transactions contemplated herein and supersede all prior understandings or agreements between the parties. All Exhibits and Schedules are incorporated herein by reference and constitute a part of this Agreement.

13.9. Waiver. The failure by any party hereto to insist upon or to enforce any of its rights shall not constitute a waiver thereof, and nothing shall constitute a waiver of such party's right to insist upon strict compliance with the provisions hereof. No delay in exercising any right, power or remedy created hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by any such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver by any party hereto to any breach of or default in any term or condition of this Agreement shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term or condition hereof. Each party hereto may waive the benefit of any provision or condition for its benefit contained in this Agreement, but only if such waiver is evidenced by a writing signed by such party.

13.10. Agreement in Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be considered an original and all shall constitute one and the same Agreement, binding upon all of the parties hereto, notwithstanding that all of the parties may not be signatories to the same counterpart. Delivery of an executed counterpart's signature

page of this Agreement, by facsimile, electronic mail in portable document format (.pdf) or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, has the same effect as delivery of an executed original of this Agreement.

13.11. Attorneys' Fees. In the event of a judicial or administrative proceeding or action by one party against the other party with respect to the interpretation or enforcement of this Agreement, the prevailing party shall be entitled to recover reasonable costs and expenses including, without limitation, reasonable attorneys' fees and expenses, whether at the investigative, pretrial, trial or appellate level, and whether in any arbitration or bankruptcy proceeding. The prevailing party shall be determined based upon an assessment of which party's major arguments or positions prevailed.

13.12. Time Periods. In the event the time for performance of any obligation hereunder expires on a day other than a Business Day, the time for performance shall be extended to the next day which is a Business Day.

13.13. Modification of Agreement. No modification of this Agreement shall be deemed effective unless in writing and signed by all of the parties hereto.

13.14. Time of the Essence. Time is of the essence of this Agreement.

13.15. Construction of Agreement. This Agreement shall not be construed more strictly against one party than against the other merely by virtue of the fact that it may have been prepared primarily by counsel for one of the parties. No provision of this Agreement shall run to the benefit of or be enforceable by any party other than the parties hereto and their permitted successors or assigns.

13.16. Consent and Approvals. City's consents or approvals may be given only in writing and only by representatives of City from time to time designated in writing by City.

13.17. Use of City's Name Prohibited. Manager will not use the name of City or any City Related Entity, or any derivation thereof, in any manner whatsoever.


13.18. Confidentiality. Manager and its employees and agents agree to keep all information related to the Venue and City confidential, except to the extent necessary to carry out Manager's obligations under this Agreement or as may be required by law. The City agrees to keep all information about Manager or Manager's business confidential to the extent permitted by law.

13.19. No Joint Venture. Nothing in this Agreement or in the performance of any obligations hereunder shall be deemed to create any partnership, joint venture or similar relationship between City and Manager

***[Remainder intentionally blank. Signature page follows.]***

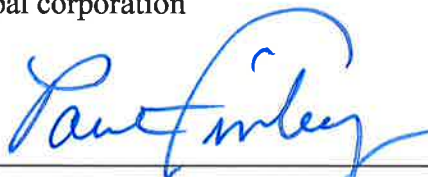

**MANAGER:**

BALLCORPS, LLC

By:   
Printed: Ralph E. Nelson Jr.  
Its: Chief Executive Officer  
Dated: 2/13/2018

**CITY:**

THE CITY OF MADISON, ALABAMA,  
A municipal corporation

By:   
Paul Finley, Mayor  
Dated: 02/13/2018  
Attest:   
Melanie A. Williard, City Clerk-Treasurer